DRN-3631926

The complaint

Mr H complains about the advice David Stock & Co Limited ('DSC') gave to him to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a self-invested personal pension ('SIPP'). He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

In March 2016, Mr H'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 H' employer would be set up – the BSPS2.

The BSPS trustees provided scheme members with an important update in August 2017. They said that the members' employer had made an expected payment into the BSPS of £550 million, as part of its agreement with The Pension Regulator and that was likely to result in an improvement to transfer values. The confirmation that the employer had made the payment referred to was announced on 11 September 2017.

In October 2017 the DB scheme administrators sent its members "time to choose" packs. I haven't been provided with a copy of the pack sent to Mr H. But I'm aware those gave scheme 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.

Members were given until 22 December 2017 to make their choice between the PPF and the BSPS2.

On 16 January 2018 the BSPS administrators sent Mr H some information about his entitlement under the BSPS. That included that his DB fund had a cash equivalent transfer value ('CETV') of £279,585.

[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.

Mr H contacted DSC on 23 January 2018 asking to meet with it. DSC emailed him some "generic information" concerning DB transfers. It also asked him to complete a single page questionnaire and to send it some documents about his DB scheme fund value. Mr H returned the questionnaire and the required information the next day. He confirmed his personal details, including that he was married, he and his wife were both working and they had two children under nine. He also provided the information about his DB fund including its CETV.

On 25 January 2018 DSC sent Mr H its "Initial Report". This said Mr H was 37 years old and his "early retirement age" was 58. It said it had obtained a transfer value analysis report ('TVAS') which showed that the growth rate required to match the benefits from the DB scheme (the critical yield) was 4.35%. DSC said that was achievable for someone with a moderate attitude to risk.

The Initial Report added that Mr H had asked for advice after receiving his CETV and because he "possibly felt it was more advantageous" to have the funds under his personal control. It set out some of the benefits of a DB scheme and the risks involved with a transfer away from one. DSC said it would generally dissuade people from transferring from a DB scheme but the BSPS members' principal reasons for ignoring that was because they preferred the flexibility a personal pension offered. And also because they found the death benefits from a personal pension more attractive. DSC also cautioned that death benefits from a DB scheme could prove to be "well in excess" of those available from a personal pension.

DSC said that if Mr H understood the advantages and disadvantages of a transfer to a personal pension it could help him to identify investment funds which suited him. It recommended Mr H invest in a named SIPP. That gave options of investing in "passive" funds, which are managed 'in house' by the provider or using a discretionary fund manager ('DFM') – who would actively manage the funds on Mr H's behalf.

Mr H met with DSC on 30 January 2018. He completed a detailed fact-find. When asked for his "preferred retirement age", the box was left blank. The questionnaire recorded that Mr H and his wife owned their home, which was valued at £425,000 subject to a mortgage of £112,000 due to be repaid when Mr H was 62 years old. He had no recorded assets or savings. He had no experience of investing in the investment markets, save for his employer's defined contribution ('DC') pension which had recently been set up. DSC recorded Mr H's priorities as "looking for flexibility of taking a pension earlier and the ability to pass the monies on to his children.'

DSC also carried out an assessment of Mr H's attitude to risk, which it calculated to be "speculative".

Mr H signed the forms to transfer his DB scheme funds to the named SIPP the same day. He also accepted DSC's terms of business agreeing to pay it £2,795 for its transfer advice and 0.1% of his fund's value for its ongoing service.

DSC set up a meeting between Mr H, itself and a named DFM on 9 February 2018. The DFM recommended an investment portfolio for Mr H. In June 2018 the named SIPP provider confirmed the funds had been transferred into the SIPP.

In 2022 Mr H wrote to DSC. He said he'd received a letter from the regulator, which had raised concerns that DSC might have provided unsuitable advice for him.

DSC provided a lengthy response to Mr H's concerns in May 2022. Amongst other things it said that Mr H's strategy was to take early retirement before the DB scheme "would permit".

It said its advice was suitable as it was in line with Mr H's attitude to risk, his goals and objectives. It said it had made Mr H aware of the risks involved. It added that it had given clear information and he had made a fully informed decision. It also believed it was clear that Mr H would have gone ahead with the transfer regardless of what it had advised him to do.

Mr H brought his complaint to us. One of our Investigators spoke with him. He told the Investigator that, at the time of the advice, he didn't have particular plans to retire early and that DSC had initially told him that one of the benefits of transferring was that he could retire from age 55 onwards. He said he was considering taking early retirement, perhaps at age 60, but had no concrete plans to do so.

The Investigator didn't think that DSC's advice was suitable for Mr H. The Investigator recommended Mr H's complaint be upheld. He said DSC should establish if Mr H had suffered a financial loss as a result of its unsuitable advice and if so pay him compensation, including £300 to address his distress and inconvenience. The Investigator said DSC should calculate any loss on a comparison with the BSPS2 benefits.

DSC didn't agree with our Investigator's assessment of the complaint. It focused its comments on the Investigator's recommendation that any comparison for loss should be based upon the BSPS2. DSC said that at the time of its advice the BSPS2 had still not been established. So it argued that any loss calculation should be based on a comparison with the PPF.

Another of our Investigators looked into the matter. She spoke with Mr H, who told her that his recollection was that he'd most likely opted into the BSPS2 prior to approaching DSC for advice. Our Investigator responded to DSC saying that, in those circumstances, she felt that our initial Investigator's assessment and recommendation for redress was reasonable.

As DSC didn't agree with our Investigators' assessments of the complaint it 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 Businesses ('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 DSC'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, DSC should have only considered recommending a transfer if it could clearly demonstrate that it was in Mr H's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

DSC's advice process

After Mr H's initial enquiry to DSC, it gathered some bare bones information about him and his family. It also asked him to pass on the details the BSPS administrators had provided about his CETV and entitlement under that scheme. From that information it produced a TVAS report and sent Mr H its "Initial Report". That report included a recommendation that Mr H should transfer his DB funds to a SIPP. But, at that time, DSC hadn't met with Mr H to collect his full fact-find information nor done any assessment of his attitude to risk. Instead it seems that, based on its experience with other members of the BSPS, DSC has assumed Mr H would: want early retirement; prefer to access his funds flexibly; and find the death benefits from a personal pension favourable. And DSC made its recommendation on the basis of those assumptions, without actually speaking with Mr H to find out if those were accurate or establishing if those were in Mr H's best interests.

Having met and spoken with Mr H there's no evidence that DSC issued a further report to update its recommendation. I think that was a flaw in its process. When making a recommendation to transfer the regulator requires DSC to issue a suitability report that reflects the information the consumer has given to it. But in this instance I don't think DSC had enough information to do that when it issued its Initial Report. For example, that report says that Mr H's "early retirement age" was 58. But at that time, as far as I can see, DSC hadn't asked him when he wanted to retire. So it's not clear where that early retirement age came from. And, in its response to Mr H's complaint, DSC referred to Mr H having a preferred retirement age of 62. But there's nothing on the file I've seen which says Mr H gave that early retirement age either. So it seems the only personal elements of DSC's recommendation report (its Initial Report) were the figures relating to Mr H's entitlement from the DB scheme, everything else appears to be generic.

I don't find DSC's approach reasonable. Transferring from a DB scheme is a major decision. Once transferred there's no going back. The benefits of the DB scheme are usually lost forever. So, regardless that DSC might have thought its assumptions about Mr H were accurate, I think it should have waited until it had confirmed Mr H's wants and needs. And only then produced a report setting out its analysis and recommendations ensuring those were in Mr H's best interests.. But in this instance it didn't do that.

Financial viability

When referring to financial viability, I mean how likely it was that Mr H would be better off in terms of retirement income by transferring.

DCS carried out a TVAS (as the regulator required) showing how much Mr H's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield). DSC's TVAS provided the critical yield for the BSPS2 at age 65 as being 4.35% if Mr H took a full pension. It said that if Mr H chose to take a tax free cash ('TFC') lump sum and a reduced pension, then that critical yield "could reduce to less than 4.0%". But it's apparent that 4% critical yield is an estimate only and there's no figure given for how much the TFC would likely be. So, it seems that DSC has provided its advice, to some extent, based on an estimate rather than actual figures.

Also, DSC made an assumption that Mr H would prefer to retire early. But it didn't provide any figures for what Mr H's entitlement from the scheme could be if he chose to retire early or what the critical yields would be to match those benefits. Had it done so, I think it's likely the critical yield figures would have increased. That's because the funds would have been invested for a shorter time before Mr H accessed them. Those funds would also then need to support Mr H for a longer time in retirement. So, in order to allow Mr H to make an informed decision I think DSC should have established at what age(s) Mr H was considering retiring from and provided him with accurate figures about his entitlements from both the BSPS2 and the PPF at those ages together with the critical yields required to match them. But it didn't do that.

DSC said that the critical yield to match the BSPS2 at age 65, without taking TFC, was 4.35%. It said that figure was "on the reasonable side of acceptable". In other words it felt that investing in a SIPP was likely to match the BSPS2 benefits. I've considered that further below.

DSC gave its advice 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 the Financial Ombudsman Service published similar rates 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.

We don't have any critical yield figures if Mr H were to take early retirement at any age, but at age 65 it was 4.35% if he took a full pension from the BSPS2. The critical yield if he were to take benefits from the PPF at age 65 reduced to 3.6%.

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 27 full years to retirement. 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 H's attitude to risk and also the term to retirement. The discount rate was marginally higher than the critical yield if Mr H took benefits from the BSPS2 at age 65. So there was a potential for him to be slightly better off if he retired at age 65 by transferring. But there would be little point in Mr H giving up the guarantees available to him through his DB scheme only to achieve a level of benefits outside the scheme that was broadly comparable to what he would receive from remaining in it. That's because, in order for the potential to improve slightly on the DB scheme benefits, he would need to put those funds at risk. But here, given the discount rate was broadly equivalent to the critical yield to match the benefits from the BSPS2, then the scope for gains was small. And, if his fund had an extended period of poor performance or suffered losses then he would likely find himself worse off in retirement.

Further, by transferring from the DB scheme Mr H would have to pay the fees and charges that are required in order to invest in a SIPP. And those would reduce any gains the funds made. Those are not charges he would have had to pay if his funds had remained in the DB environment.

It follows that, while a transfer to a SIPP might have matched the benefits from the DB scheme, it was unlikely to greatly enhance his income in retirement. For this reason alone a transfer out of the DB scheme wasn't in Mr H's best interests. Of course financial viability isn't the only consideration when giving transfer advice. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered this below.

Flexibility and income needs

It's notable that, before Mr H had sat down with DSC to set out his objectives, DSC had assumed he would want to retire early and have flexible access to his retirement income. Given its experience of advising Mr H's colleagues, this might have been a reasonable assumption. But that doesn't mean that transferring his DB funds was in Mr H's best interests.

At the time, Mr H was over 20 years away from 58, the age DSC assumed was his preference in its Initial Report. And over 24 years away from 62 – the early retirement age it used in its response to Mr H's complaint. And Mr H has told us that he would like to retire early but still doesn't have any concrete plans to do so. But DSC has clearly identified early retirement as a key reason for recommending that Mr H transfer.

However, it doesn't appear that DSC pointed out that Mr H could take early retirement while remaining in the DB scheme. Both the BSPS2 and the PPF allow for early retirement. Although, in both schemes the benefits have actuarial reductions to reflect the fact that the pension will – most likely – have to sustain him over a longer period. But there's no evidence DSC explained this to Mr H. In fact in its complaint response DSC said that Mr H's "retirement strategy was to retire before the BSPS scheme would permit". But the BSPS scheme would "permit" early retirement from age 55, the same age that was available from a SIPP. So I don't think DSC's advice was clear on this point.

DSC also said that by transferring Mr H gained the opportunity to access his funds flexibly in retirement. But I can't see evidence that Mr H had a need to access his DB funds flexibly throughout his retirement.

When he completed the fact-find Mr H said he thought he'd need an income of £30,000 a year in retirement. That's more than he would have been entitled to under the DB scheme. But, given he had over 20 years until he was likely to seriously consider retiring, and over 27 years to the scheme's normal retirement age, it was probably the case that he didn't know what his income needs would be in retirement.

In addition Mr H's DB funds were unlikely to be his only retirement provision. He had recently joined his employer's DC pension scheme. The figures on file aren't precise but it seems that he and his employer together were contributing 12% of his salary towards that pension. At that time that would have been around £6,400 a year. He could have anticipated continuing to contribute to that pension (or a similar one if he were to change jobs in the future) for the remainder of his working life.

So I think it's reasonable to assume that, by the time Mr H reached early retirement age, his DC pension should have built a sizeable pot. Indeed without allowing for Mr H increasing his contributions, his salary growing, or any return on the investment, by age 60 he could have a pot in the DC pension of around £143,000. And that sum would increase to around £176,000 by the time he reached 65. So Mr H could have accessed those funds in a flexible manner if he felt the need to do so. That would have allowed him to leave his safeguarded DB funds untouched. So he didn't need to transfer out of the DB scheme in order to take early retirement or to have some flexible access to funds in retirement.

It follows that I'm satisfied Mr H could have met his flexible income needs in retirement while remaining in the DB scheme. So, I don't think it was in his best interests to transfer out of the DB scheme environment just to have flexibility that he didn't need.

That said, it's true to say that Mr H couldn't have had the same flexible access to his income from a DB scheme. While he could have chosen to take his benefits 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 him to draw down funds as he saw fit. But while I can see why that might have been an attractive prospect to him as I've said above, if Mr H wanted flexible access to funds then he could have accessed his DC money in that manner. So he had no need to give up the guaranteed benefits from the DB scheme in order to have flexible access to funds or to take TFC.

Death benefits

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 is generally an attractive feature to consumers. That's because whatever was left within it at the date of the pension holder's death would be passed on to their beneficiaries. And, for Mr H, if that happened before his retirement or soon after, then that would likely be a significant sum. In contrast the BSPS2 or PPF would pay Mr H's wife half of his yearly pension after he died. And that pension would die with her. So Mrs H couldn't leave it as a legacy for their children if she died.

But whilst I appreciate death benefits are important to consumers and Mr H 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 H about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement not to provide a legacy to loved ones on death. And I don't think DSC explored to what extent Mr H was prepared to accept a lower retirement income in exchange for higher death benefits.

I've noted that, to its credit, DSC did explain that the widow's benefits on offer from the DB scheme environment could be worth "well in excess" of a lump sum from a SIPP. But I think it could have done more to highlight that these were guaranteed and escalated. They were not dependent on investment performance, whereas the sum remaining on death from a SIPP was. And there may not have been a large sum left in the SIPP if Mr H lived a long life, the investments performed poorly or if he took large sums from the fund early in in his retirement. In any event, DSC should not have encouraged Mr H to prioritise the potential for higher death benefits through a SIPP over his security in retirement.

Further, I'm aware that Mr H had death in service cover from his employer. So that would have paid a considerable lump sum in the event he died while still working for his employer. But, if he wanted to leave a legacy for his family, which didn't depend on his employment, investment returns or how much of his pension fund remained on his death, I think DSC should have instead explored life insurance. I appreciate that life insurance can be expensive. So, the starting point ought to have been for DSC to ask Mr H how much he would ideally like to leave to his family, and this could have been explored on a whole of life or term assurance basis. But there's little evidence it did so.

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 H. And I don't think that insurance was properly explored as an alternative.

Control or concerns over financial stability of the DB scheme

I understand that, like many of his colleagues Mr H, was most likely concerned about the prospect of his pension moving into the PPF. There was some widespread trepidation about what moving pensions to the PPF meant for scheme members. It's also well known that this was a period of uncertainty for people like Mr H. The closure of the BSPS had arisen largely because the employer could no longer support it. So many of Mr H's colleagues were concerned that the BSPS2, once established, could suffer the same fate. But this only serves to emphasise the need at that time for a balanced assessment of the options available and ultimately the requirement 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. It's likely that Mr H's concerns of that nature were a motivating factor in seeking advice and considering transferring his pension. So he might well have been leaning towards transferring his pension when he sought advice. But DSC was tasked with rationally addressing those concerns and providing an appropriately balanced view of all the available options.

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 the 10% reduction didn't apply across the board, and for those taking early retirement at a young age, in some ways the PPF could actually be beneficial for scheme members as the benefits for those retiring were more generous than from the BSPS (or the BSPS2). 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 in order to recommend that Mr H should transfer out of his DB scheme, even if that scheme were to move to the PPF, DSC needed to be able to clearly demonstrate that doing so was in his best interests. But I'm not persuaded that was the case for Mr H.

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

It seems to me that any requirement Mr H had for 'control' related more to moving his pension away from an employer that he didn't trust or whose solvency was in question, rather than a desire to take a hands-on approach to investment management.

So, I think DSC should have explained to Mr H that his employer and the trustees of the BSPS2 were not one and the same. And in any event, Mr H was not intending to leave his employment and his DC pension remained connected to his employer. So, transferring out of the DB scheme didn't separate his pension destiny from his employer. And I don't think that these concerns should have led to DSC recommending Mr H transfer out of the DB scheme altogether.

Use of DFM

DSC recommended that Mr H use a named DFM to manage his pension funds. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr H, it follows that I don’t need to consider the suitability of the investment recommendation. This is because Mr H should have been advised to remain in the DB scheme and so the DFM would not have had the opportunity to manage his funds if DSC had given suitable advice.

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 H. But DSC wasn’t there to just transact what Mr H might have thought he wanted. The adviser’s role was to really understand what Mr H needed and recommend what was in his best interests.

Ultimately, I don’t think the advice DSC gave to Mr H was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr H was putting his income security in retirement at risk and was likely to obtain lower retirement benefits. And, in my view, there were no other particular reasons which would justify a transfer and outweigh this. DSC shouldn’t have advised Mr H to transfer out of the scheme for flexibility or early retirement options he could have had while remaining in the scheme or because of his concerns over the PPF. These things weren't worth giving up the guarantees associated with his DB scheme.

So, I think DCS should have advised Mr H to remain in his DB scheme. DSC advised Mr H after the “time to choose” exercise had concluded. Mr H’s recollection is that he opted into the BSPS2 at that time. On the balance of probabilities I think that’s most likely what happened. The benefits from the BSPS2 were generally more generous than those from the PPF and Mr H would have had to make a decision on that before he ever approached DSC. So I think it’s likely he’d already chosen to opt into the BSPS2 at the point he sought advice.

Of course, I have to consider whether Mr H would've gone ahead anyway, against DSC’s advice. I’ve considered this carefully, but I’m not persuaded that Mr H would have insisted on transferring out of the DB scheme, against DSC’s advice. I say this because Mr H was an inexperienced investor and this pension accounted for the majority of his retirement provision. So, if DSC 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 have accepted that advice.

In light of the above, I think DSC should compensate Mr H for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology. As I'm satisfied that Mr H had already opted into the BSPS2, DSC will need to use those benefits as a comparator when calculating redress.

Also, as I think that learning that he might have unnecessarily put his pension funds at risk was a source of distress and inconvenience for Mr H, I think DSC should also pay him £300 to address that.

Putting things right

A fair and reasonable outcome would be for the business to put Mr H, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr H would have most likely remained in the DB scheme and joined the BSPS2 if DSC had given suitable advice.

DSC must therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement PS22/13 and set out in the regulator’s handbook in DISP App 4:
https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter.

DSC should use the FCA's BSPS-specific redress calculator to calculate the redress. If DSC does not yet have access to the calculator it should contact the supervision department of the FCA to seek access to it as soon as possible. A copy of the BSPS calculator output should be sent to Mr H and the Financial Ombudsman Service upon completion of the calculation together with supporting evidence of what DSC based the inputs into the calculator on.

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

This calculation should be carried out using the most recent financial assumptions in line with PS22/13 and DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr H's acceptance of the decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, DSC should:

- calculate and offer Mr H redress as a cash lump sum payment,
- explain to Mr H before starting the redress calculation that:
    - his redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
    - a straightforward way to invest his redress prudently is to use it to augment his personal pension
- offer to calculate how much of any redress Mr H receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr H accepts DSC's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr H for the calculation, even if he ultimately decides not to have any of his redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr H's end of year tax position.

Redress paid to Mr H as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, DSC may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from his pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr H's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

I also think DSC should pay Mr H £300 for the distress and inconvenience caused by its unsuitable advice.

Where I uphold a complaint, I can award fair compensation of up to £170,000, 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 £170,000, I may recommend that the business pays the balance.

My final decision

<u>Determination and money award</u>: I uphold this complaint and require David Stock & Co Limited to pay Mr H the compensation amount as set out in the steps above, up to a maximum of £170,000.

<u>Recommendation:</u> If the compensation amount exceeds £170,000, I also recommend that David Stock & Co Limited pays Mr H the balance.

If Mr H accepts this decision, the money award becomes binding on David Stock & Co Limited.

My recommendation would not be binding. Further, it's unlikely that Mr H can accept my decision and go to court to ask for the balance. Mr H 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 H to accept or reject my decision before 6 November 2023.

Joe Scott
Ombudsman