DRN-3654685

Financial Ombudsman Service

The complaint

Mr C complained that he was given unsuitable advice to transfer his defined benefit (DB) British Steel Pension Scheme (BSPS), to a type of personal pension plan, in 2018.

The St. David's Partnership is responsible for answering this complaint and so to keep things consistent, I'll refer mainly to "SDP".

What happened

In March 2016, Mr C's employer announced that it would be examining options to restructure its business, including decoupling the BSPS 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 personal pension arrangement.

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 C's employer would be set up – the BSPS2.

In October 2017, members of the BSPS were being 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 2017 (and was later extended to 22 December 2017).

Mr C was concerned about what the announcement by his employer meant for the security of his preserved benefits in the BSPS. He was unsure what to do and was referred to SDP which is responsible for providing the pension advice. Information gathered about his circumstances and objectives at the time of the recommendation were broadly as follows:

- Mr C was 44 years old, married and with one young dependent child. Mr and Mrs C didn't own a home and lived in rented accommodation.

- Although still working full-time, Mr C was described having and arthritic type health concern which was undergoing assessment and at the time of the advice he was awaiting some further tests. It doesn't appear that Mrs C was employed at the time due to home and family caring responsibilities.

- Mr C earned around £35,000. After expenses he and Mrs C had some disposable income left over. Mr C had savings of £2,000. He had no other major assets or liabilities.

- The cash equivalent transfer value (CETV) of Mr C's BSPS was approximately £260,820. He'd accrued over 21 years' service. The normal retirement age (NRA) was 65.

SDP set out its advice in a suitability report in January 2018. In this it advised Mr C to transfer out of the BSPS and invest the funds in a type of personal pension plan. SDP said this would allow Mr C to achieve his objectives. Mr C accepted this advice and so transferred out. In 2021 Mr C complained to SDP about its advice, saying he shouldn't have been advised to transfer out to a personal pension.

Mr C referred his complaint to our Service. One of our investigators looked into the complaint and said it should be upheld. In response, SDP said it hadn't done anything wrong and was acting on the financial objectives Mr C had at the time. As the complaint couldn't be resolved informally, it's come 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 also 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'). 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.

<u>*The applicable rules, regulations and requirements*</u>

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 SDP'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.

I have further considered that 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, SDP should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr C's best interests.

I've used all this information we have to consider whether transferring away from the BSPS to a personal pension was in Mr C's best interests. I have also carefully considered the final response letter from SDP. I've carefully considered too, the various other responses made to the points contained within our investigator's view.

Having done all this, I'm upholding Mr C's complaint.

<u>*Introductory issues*</u>

I'd like to start by referring to the 'timeline' of events. I've already described above how members of the BSPS were given until 22 December 2017 to decide whether or not to join the BSPS2. It's not entirely clear whether Mr C ever made that choice. However, if he did so, he'd have only remained signed up for the forthcoming BSPS2 for a short time. This is because we know that by 17 January 2018 SDP had advised him to transfer to a personal pension arrangement.

On the other hand, there's no documentation, which I've seen, showing he did make a choice and we know that if no choice was made then the member would eventually move to the PPF if they didn't transfer away to a personal pension type arrangement.

However, I can see a 'fact-find' was produced by SDP on 7 November 2017. This, of course, was several weeks ahead of the 'hard' deadline of 22 December 2017 I've mentioned above and where members of the BSPS needed to make a choice. So, I think by 7 November 2017 there is clear evidence that SDP had started to advise Mr C. I also see that the transfer analysis by SDP – which is a significant part of the advice process – was issued on 22 November 2017. Again, this was quite some time before the decision deadline. There were also some other documents and questionnaires that Mr C and SDP worked together on to complete as part of what was clearly a pension transfer advice process. I therefore think the advice process was substantially underway throughout November 2017 with SDP committing resources to analysing Mr C's financial situation and a firm commitment to advising him about whether or not to transfer his DB pension.

SDP has asked me to consider that the formal advice to transfer was not made until 17 January 2018. And I've also noted that the client registration form for the advice wasn't signed until 19 January 2018. However, even though the suitability report which contained the recommendation for Mr C to transfer to a personal plan, was issued on 17 January 2018, we know that Mr C had engaged the advice of SDP quite a long time before this. In my view, the transfer analysis produced on 22 November 2017 was a major part of advising Mr C. I also know that whilst he didn't sign the client registration form until 19 January 2018, he'd had it since November. In any event, even if I were to consider 19 January 2018 as the formal 'start' of the advice, that wouldn't be right. This is because the suitability report had already been issued (on 17 January 2018).

So, the only anomaly here is the client registration form that was signed rather late. I think the evidence strongly shows the signing of this was an administrative event and probably just swept up by the adviser after concluding the main part of the advice process. Everything else points to Mr C and SDP starting to engage with each other as of November 2017 and this is commensurate with the wider BSPS timeline of events. Clearly, if SDP is implying that 19 January 2018 was the formal beginning of the process, then it shouldn't have been researching his pension – and more importantly, formally advising him to transfer away – as of 17 January 2018 which was before the client registration form was signed.

In short, SDP can't have it both ways.

I should say that none of this really matters to the actual *suitability* of the advice. Nevertheless, it may matter to the redress that could be due for providing an unsuitable recommendation to transfer away from a DB scheme: redress would be measured against as if the member would have joined the BSPS2, rather doing nothing and entering the PPF by default. In my view, SDP had plenty of time to issue its suitability report ahead of the deadline as its advice process commenced in early November. At the very least, SDP could and should therefore have reinforced the deadline issue of 22 December 2017 to Mr C and he could have signed up for the BSPS2 as a precautionary measure. It could have advised Mr C that he'd have still been able to change his mind and he'd have been able to later transfer away from BSPS2 rather than from the PPF.

Financial viability

SDP referred in its transfer analysis and suitability report to ‘critical yield’ rates. The critical yield is essentially the average annual investment return that would be required on the transfer value - from the time of advice until retirement - to provide the same annuity benefits as the DB scheme. In this case, SDP used the existing scheme (BSPS) for the critical yield comparisons, rather than the ‘new’ BSPS2. But I think the yields for BSPS2 would have been between those for the BSPS and PPF (although probably much nearer to the BSPS).

The critical yield comparison was a requirement from the regulator at the time when advising clients on DB transfers. It’s also important to point out that the critical yield comparison is only one of a number of different metrics I’ve used to compare the different schemes. And in my view, these all point one way – that Mr C was probably going to receive lower pension benefits overall, as a result of transferring to a type of personal pension plan.

The critical yield required to match the benefits at the age of 65 in the BSPS, was 7.62% if Mr C took a full pension without a tax-free lump sum. If taking a tax-free lump sum, the critical yield was 6.24%. However, SDP also calculated the critical yield rates for an earlier retirement, at the age of 57. It did this because Mr C had apparently expressed a desire to retire early. I explain more about this issue later. But for the age of 57, the critical yields came out at 9.05% (no tax-free cash) and 7.02% (with tax free cash) respectively. For comparisons with the PPF, the critical yields were 5.68% (full pension with no tax-free cash) and 5.4%.

SDP acknowledged that achieving the critical yields would be ambitious. I think that’s right as the yields we should focus on here were showing that to make the transfer worthwhile from a financial perspective, the growth would need to exceed somewhere in the regions of 6.24% - 7.02% per year. It would also have to do this year after year – for up to 20 years.

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. SDP assessed Mr C as a “medium” risk investor.

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 was only 4.5% per year for 20 years to retirement (age 65), which is well below all of the critical yield figures I’ve referred to above. For a retirement at the age of 57, the discount rate was only 4%. I’ve also kept in mind that the regulator's middle projection rate was 5% but this hadn’t been updated for several years.

I’ve also noted that using the NRA of 65, SDP’s own transfer analysis said that in order to purchase an annuity to provide benefits of equal value to the estimated benefits provided by the existing scheme the estimated fund required (also known as the capital value) was £572,600. Even to purchase an annuity to provide benefits of equal value to the estimated benefits provided by the existing scheme, assuming *no* spouse’s pension, *no* increases in payment and *no* guarantee at retirement, the estimated fund required at 65 was £330,911.

To reiterate, these figures are found in SDP’s own analysis based on data the regulator required businesses to refer to at the time. And because these figures are far above Mr C’s CETV, they represent, in my view, a revealing window into the value of the guaranteed pension Mr C could be giving up by transferring away to a personal plan, rather than a similar DB scheme that was on offer here.

Elsewhere in its transfer analysis, SDP also made mention of the PPF, which it described as a compensation scheme providing a *"safety net"* for pension schemes when the sponsoring employer becomes insolvent. SDP said the critical yields to match the benefits available through the PPF at age 65 were lower. But these yields related to the *reduced* benefits available with the PPF and SDP itself says Mr C wouldn't have wanted to transfer to this scheme. It's also important to remember here that the effect of charges and fees associated with a personal pension such as the one being recommended to Mr C, would have further reduced the likely growth.

I therefore think it's fair to say that from a financial comparison perspective, SDP's own figures, shown in its suitability report and transfer analysis documents, showed that transferring to a personal pension plan would mean Mr C would likely receive lower pension benefits in the longer term.

Of course, according to SDP, its recommendation that he should transfer out to a personal pension was not based on the financial comparisons with his current scheme alone. Rather, SDP said Mr C also had other reasons to transfer away, so I've thought about all the other considerations which might have meant a transfer was suitable for him, despite providing the overall lower benefits mentioned earlier.
I've considered these below.

Other needs and objectives

I've noted that when listing his priorities Mr C said they were as follows:

- The ability to retire early
- Greater personal control and flexibility of the pension funds
- Maximising death benefits
- Maximising tax-free cash lump sum at retirement
- To capatilise on the current high CETV

I have therefore considered all these issues in turn.

Retiring early

Mr C was still only 44 years old. However, both he and / or the adviser seem to have assumed an apparent history of cancer in Mr C's family as being a significant rationale for transferring away from a DB scheme and into a personal pension plan. This fear was apparently formed due to two of Mr C's near family relatives having died from a particular form of the disease in the past; this seemed to form a foundation for thinking Mr C ought to retire early or that he too could pass away prematurely, just like his relatives. I've considered the relevance of this.

Clearly, this is an emotive subject. But I've seen no real evidence that Mr C would likely suffer the same fate. Those relatives who had died had done so in the past when medical research and overall life expectancy were different. There was also very little detail and no analysis which substantiated a real requirement for Mr C to take action now to avoid the same fate. So, whilst I'm sure he'd be mindful of similar symptoms potentially emerging in the future, there's simply no link that the common cancer mentioned in the advice documentation I've seen, would specifically and negatively affect Mr C. In reality, he had no symptoms or warning signs associated with the disease mentioned. So, I think the adviser should have been pointing out to Mr C that any assumptions based on this fear ought not to be predominantly directing his thoughts about transferring his pension when he was still only 44 years old and completely disease-free and at no more proven risk than any other person.

Another health condition was recorded at the time, related to Mr C's back. Again, I don't doubt this issue might have been a cause for concern. However, my understanding of this was that Mr C was still able to work full time in the steel industry and the condition was still awaiting further investigation.

It's always a sensitive issue when addressing health concerns of these types. And I certainly wouldn't want to trivialise fears about getting older. However, in my view Mr C was apparently well enough to work, and whilst I'm sure any health concerns he had about his future might well have been real and genuine, his current situation did not justify transferring away from a DB scheme on this basis. In any event, the BSPS2 did contain some ill-health related protections which were not present in the personal plan he was recommended to transfer into. It appears to me that these protections were not duly considered. This is because the de-facto position of the adviser was evidently to recommend that Mr C should transfer into a personal pension plan.

I've also considered whether these health concerns related more to Mr C just retiring early from what was a hard and heavy industry, rather than about fears of him actually dying or being completely physically unable to work. Put another way, did he just want to stop working because he was getting older?

But if this was the case, then this too was a poor judgement. The notes from the time clearly show Mr C had an aspiration to retire early but he certainly didn't have any fixed plans which had been properly thought through.

What I mean by this is that I'm sure, like most people, Mr C probably wanted to stop working as early as possible, but I think what he told the adviser, would only ever have been general retirement aspirations on his part. In reality, there was no plan to retire early. At the age of 44 it was simply far too early to speculate about this. In my view, Mr C could only reasonably be considered as 'mid-career'. More so, the modest level of savings and assets he had at the time simply didn't seem to support a very early retirement without an uplift in his financial circumstances. In any event there was no real analysis around what his retirement income would need to be to achieve a comfortable lifestyle for himself and Mrs C when he stopped work. I explain a little more about this below.

Flexibility and control

In a similar vein, SDP also implied he'd be able to select the timing and type of benefits taken at retirement and also vary his retirement income.

However, I can't see that Mr C required flexibility in retirement in the way suggested. In any event, flexibility was poorly defined by SDP. I therefore think this was no more than a 'stock' objective used to help justify the recommendation to transfer out to a personal plan. For example, I've seen nothing that showed Mr C required changing how his retirement benefits ought to be paid. He had already signed up to a new and more flexible DC pension with his existing job as a consequence of the old BSPS scheme being closed to new contributions. This DC pension was being significantly contributed towards by both Mr C and his employer - 6% and 10% respectively. It still had up to 20 years left to run (almost 13 years if he did eventually manage to retire early, at the age of 57). So, this secondary pension would have provided him with any flexibility he might have needed in the years ahead.

This means I've seen nothing explaining why Mr C wouldn't want to continue membership of a DB scheme and to use that scheme in exactly the way it was originally intended. Indeed, I think that by retirement, whenever it eventually came, Mr C could have been in an agreeable position. On one hand he'd have an existing deferred DB scheme of considerable value. This would contain all the guarantees and benefits that such schemes normally bring which tend to include a promise to pay a known pension for life. Significant indexation guarantees also existed within BSPS2 and the scheme was still underpinned by the PPF. On the other hand, he'd have also built up a DC scheme over a reasonable period of time – up to 20 years. So, if Mr C ever found he needed so-called flexibility, then he'd be able to use the latter, rather than transferring away from the former.

I've also seen no evidence that Mr C had either the capacity or desire to exercise control over his funds. With his DB scheme, Mr C was being offered the opportunity to transfer to the new BSPS2. It's true there were some differences in this scheme when compared to the original BSPS, but it remained a DB scheme nonetheless and was run for him by trustees. Mr C himself had no experience of these types of 'money market' investments and I think he would have found the complexity, scale and responsibility of managing over £260,000 of transferred funds to be onerous in the years ahead. What I've seen tends to show Mr C would have required ongoing financial advice and support, all of which would cost him money which his DB scheme didn't require from him.

SDP itself set out the estimated pension he'd get under the BSPS. As I've implied, there is an unpredictability in assessing retirement needs so far in advance and at such a young age. So I don't think it was possible to accurately assess what Mr C might have needed as an income in retirement, particularly as he still had a young child and no owned property.

SDP's analysis said that if retiring at 65, Mr C could expect an annual pension of around £17,114 per year or £11,342 together with a tax-free lump sum of £75,614. Even if I were to only use the estimated pension calculated for the earlier retirement, at aged 57, the full pension was still £9,848 per year. And it certainly isn't unreasonable to say Mr C could have built up a DC fund well in excess of £100,000. I therefore don't think there's anything showing Mr C's pension entitlements wouldn't have met his income requirements, without any need to transfer from a DB scheme.

These were BSPS figures, but that doesn't really matter because current members were being given similar estimates about the new scheme (BSPS2) at around the very time this advice was being sought. I don't think SDP adequately explained these things to Mr C as its advice simply discounted him transferring to the new scheme to obtain flexibility which was poorly defined and which he didn't need.

I therefore think Mr C's circumstances here were much more aligned to him transferring to BSPS2 and retiring from that when he felt he was ready to do so. The evidence pointed to him still being able to retire perhaps a little earlier than 65 if he felt he really needed to – there would have been an actuarial reduction involved, depending on his age at the time. But because he also had a smaller 'second' DC pension, this supported that strategy in my view.

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 BSPS2 contained certain benefits payable to a spouse and children if Mr C died. Mr C was married and had a child so I think the benefits found in BSPS2 would have been of value to Mr C.

It’s clear Mr C told the adviser that his mother had lost out when his father had died at a relatively young age because she “only got half” of his pension. He said he didn’t want the same to happen to him and Mrs C. But this needed context. What I think was being referred to here was a DB scheme which had similar characteristics to the one Mr C was in himself. Mr C’s mother probably did get around half of her husband’s pension, but this was guaranteed and paid for the rest of her life. And it was likely uplifted each year and to a large extent protected from inflation. His father had evidently been aged 55, so Mrs C may have received this pension for many years.

As an alternative strategy, the adviser also told Mr C that he’d be able to pass on the whole value of a personal pension, potentially tax-free, to anyone he nominated. I think there was clearly a discussion about this, so the lump sum death benefits on offer through a personal pension was probably made to look like an attractive feature to Mr C.

But whilst I appreciate death benefits are important to consumers, and Mr C might have thought it was a good idea to transfer the BSPS to a personal pension because of this issue, 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 SDP explored to what extent Mr C was prepared to accept a lower retirement income in exchange for different death benefits.

Mr C was only 44. An obvious drawback with a personal plan’s death benefits is that the amount left to pass on – to anyone – may be substantially reduced as the pensioner starts to withdraw his or her retirement income. To this end, if Mr C had lived a long life there could be nothing left at all in his personal pension plan.

Although I’ve questioned the ability to forecast an early retirement whilst still so young, there’s no real doubt that retiring at 57 was at least mentioned – SDP’s defence of this complaint is partially predicated on this. The adviser should have therefore additionally known that a male retiring at 57 would likely have many years ahead in which he would be drawing down his pension funds thus leaving very little left to pass on to someone. As I’ve said, there was no credible or verified information showing Mr C’s life expectancy was going to be short. It also doesn’t appear that SDP took into account the fact that Mr C could have nominated a beneficiary of any funds remaining in his other (TATA) DC scheme. So, to this end, Mr C already had options ensuring part of his pension wouldn’t ‘die with him’.

Overall, in this case I don’t think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr C. I think this objective, listed as it was in the suitability report, was no more than a generic comment and not meaningful to Mr C’s situation.

Control or concerns over financial stability of the DB scheme

It’s clear that Mr C, 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 SDP said he lacked trust in the company. He’d heard negative things about the PPF and SDP said he could have more control over his pension fund.

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

By the point of the advice being delivered details of BSPS2 were known and it seemed likely it was going ahead. So, I think this should have alleviated any concerns about the scheme moving to the PPF.

However, even if there was a chance the BSPS2 wouldn't go ahead, I think that SDP should have reassured Mr C that the scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr C through the PPF would have still probably provided a significant portion of the income he would have needed at retirement, and he was still unlikely to be able to exceed this by transferring out, given his attitude to risk and the effect of pension charges and fees. 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 have led to SDP's recommendation to Mr C to transfer out of the DB scheme altogether.

Other issues

- *Tax-free cash*

Mr C had an apparent objective to maximise his tax-free cash amount upon retirement, but I think most people would agree that this is generally a positive thing and if put before them, they'd say it was something they were interested in. I think SDP implied to Mr C that he could access more tax-free cash if he transferred to a personal pension plan. It said he'd be able to access 25% of his pension as a lump-sum and then use the remaining funds more flexibly. It's usually the case that more tax-free cash can be accessed from a personal pension when compared against a DB scheme; this is because the values and benefits of the two schemes are calculated differently. But SDP should have been telling Mr C at the time that extra tax-free lump sums being removed from a personal pension, potentially from the age of 57 in his case, also came with consequences in that the amount left for his later retirement years would obviously decrease.

- *The high CETV*

I've considered what SDP says about the historic high transfer values available at the time. I agree that in today's environment, these do seem high: Mr C would not be offered nearly as much today as he was in 2017 to transfer away from his DB scheme. But I think this is to use the benefit of hindsight. In 2017, we were in a sustained period of loose monetary policy and low interest rates and there was no indication at the time that this would change anytime soon.

However, this still doesn't change what I've said in relation to the financial considerations of transferring away from a DB scheme. I've described above that Mr C, when looked at through the lens of that time, would likely be in line to receive lower benefits overall at retirement as a result of transferring away. There was very little to say he'd achieve, let alone exceed, the various critical yield scenarios. He should not have been advised to transfer on the basis of the CETV.

Suitability of investments

SDP recommended that Mr C invest his funds in a personal pension. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr C and I don't think he would've insisted on transferring out of the scheme if clear advice had been given to him, it follows that I don't need to consider the suitability of the investment recommendation. This is because he should have been advised to remain in the DB scheme and so the investment in the new funds wouldn't have arisen if suitable advice had been given.

Summary

I don’t think the advice given to Mr C was suitable.

He was giving up an opportunity of a guaranteed, risk-free and increasing income within the BSPS2. By transferring to a personal pension, the evidence shows Mr C was likely to obtain lower retirement benefits. And I don’t think there were any other particular reasons which would justify the transfer and outweigh this. I think SDP ought to have advised him against transferring out of his DB scheme for this reason, particularly as it meant he’d be worse off in retirement.

So, I don’t think it was in Mr C’s best interests for him to transfer his DB scheme to a personal pension when he had the opportunity of opting into the BSPS2.

I think it was clear to all parties that the BSPS2 was likely to be going ahead. Mr C still had many more years before he intended to retire. So, I don't think that it would have been in his interest to accept the reduction in benefits he would have faced by the scheme entering the PPF, as it wouldn't be offset by the more favourable reduction for very early retirement. By opting into the BSPS2, Mr C would have retained the ability to transfer out of the scheme nearer to his retirement age if he needed to. The annual indexation of his pension when in payment was also more advantageous under the BSPS2.

On this basis, I think SDP should have advised Mr C to opt into the BSPS2. As I’ve explained, SDP was advising Mr C from early November 2017 and there was plenty of time for him to have first opted for the BSPS2 if only as a precaution at that stage. When the formal recommendation arrived, this should have advised him to stay in the BSPS2.

I have considered, given the circumstances of the time, whether Mr C would have transferred to a personal pension in any event. I accept that SDP disclosed some of the risks of transferring to Mr C, and provided him with a certain amount of information. But ultimately it advised Mr C to transfer out, and I think Mr C relied on that advice.

I’m not persuaded that Mr C would have insisted on transferring out of the DB scheme, against SDP’s advice. I say this because Mr C was an inexperienced investor and this pension accounted for most of his retirement provision at the time. So, if SDP 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.

I’m also not persuaded that Mr C’s concerns about the PPF were so great that he would have insisted on transferring his pension, 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. So if SDP had explained Mr C was also unlikely to exceed the benefits available to him through the PPF if he transferred out, and that he could probably meet his income needs in retirement without risking his guaranteed pension, I think that would have carried significant weight.

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

Putting things right

A fair and reasonable outcome would be for the business to put Mr C, as far as possible, into the position he would now be in but for SDP’s unsuitable advice. I consider Mr C would have most likely opted to join the BSPS2, rather than transfer to the personal pension if he'd been given suitable advice and compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance. SDP should use the benefits offered by BSPS2 for comparison purposes.

SDP 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.

SDP should use the FCA's BSPS-specific redress calculator to calculate the redress. A copy of the BSPS calculator output should be sent to Mr C and our Service upon completion of the calculation.

This calculation should be carried out using the most recent financial assumptions in line with 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 C's acceptance of my final decision.

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

- calculate and offer Mr C redress as a cash lump sum payment,
- explain to Mr C before starting the redress calculation that:
    - their 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 their redress prudently is to use it to augment their DC pension
- offer to calculate how much of any redress Mr C receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr C accepts SDP's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr C for the calculation, even if he ultimately decides not to have any of their redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr C's end of year tax position.

Redress paid to Mr C as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, SDP may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr C'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.

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.

Our investigator recommended that SDP should pay Mr C for the distress and inconvenience caused by the unsuitable advice. I have considered the impact this would likely have had on Mr C in his particular circumstances. This pension at the time represented nearly all his retirement provision. In his situation I think the thought of losing material benefits would have impacted heavily upon Mr C. So I agree the recommended payment of £400 for distress and inconvenience. SDP should pay Mr C this amount in addition to the redress I've set out above.

My final decision

Determination and money award: I am upholding this complaint and I now direct The St. David's Partnership to pay Mr C the compensation amount as set out in the steps above, up to a maximum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that The St. David's Partnership pays Mr C the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr C.

If Mr C accepts my final decision, the money award becomes binding on The St. David's Partnership.

My recommendation would not be binding. Further, it's unlikely that Mr C can accept my decision and go to court to ask for the balance. Mr C 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 C to accept or reject my decision before 27 September 2023.

Michael Campbell
Ombudsman