DRN-3655987

The complaint

Mr C complains about the advice given by D C Financial Limited ('DCFL') to transfer the benefits he held in the British Steel Pension Scheme ('BSPS') to a self-invested personal pension ('SIPP'). The BSPS was a defined benefit ('DB') occupational pension scheme. He says the advice was unsuitable for him.

What happened

In March 2016, Mr C'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.

In May 2017, the PPF made the announcement that the terms of a Regulated Apportionment Arrangement (RAA) had been agreed. That announcement included 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.

And in October 2017, after terms of the RAA had been met, 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 the BSPS2 or transfer their BSPS benefits elsewhere. To assist with this decision, in November 2017, the trustees of the BSPS provided Mr C with a summary of the transfer value of his scheme benefits. This said his benefits had a cash equivalent transfer value ('CETV') of £96,966.24. A decision had to be made by December 2017. And Mr C opted to join the BSPS2 when it was established.

Although Mr C had made a decision in response to the "time to choose" exercise, in January 2018 he asked DCFL for advice about his BSPS pension.

On 16 January 2018, DCFL completed a fact-find to gather information about Mr C's circumstances and objectives. It noted he was 35, in good health, employed full time and married with three children. Mr and Mrs C owned their own home with an outstanding mortgage, on a capital repayment basis, that had a remaining term of 22 years. Mr C also had a share in two investment properties

In addition to the benefits held in the BSPS, Mr C was also a member of his employer's new defined contribution ('DC') pension scheme. And he and his employer were making combined contributions to this equivalent to 16% of his salary.

Mr C also held benefits in another DB scheme from a previous period of employment. As of September 2008, the guaranteed pension payable under this scheme was £1,091.45 per year. That amount though would continue to escalate until, and in, retirement.

It was recorded that Mr C hoped to retire at age 57 and thought he'd need an income of £1,200 - £1,500 per month in retirement. The fact find said the reasons Mr C was considering a transfer were because he wanted growth above inflation, had a lack of trust towards his employer and so would like control of his benefits, didn't want to incur penalties if he retired early and was interested in alternative, lump sum death benefits.

A follow up meeting between DCFL and Mr C took place on 25 January 2018. I understand at this meeting a recommendation was given by DCFL that Mr C transfer his pension benefits to a SIPP. And documents were signed to enable the transfer to take place including an authorisation form to the BSPS trustees for the funds to be released and an application form for the new pension provider. DCFL also wrote to the trustees of the BSPS on the same day, saying it had provided Mr C with regulated advice.

A written summary of the advice given by DCFL was not produced until 31 January 2018 – after the application had been submitted. The suitability report recapped the reasons Mr C was considering a transfer – to achieve growth in excess of that offered by the BSPS2, to take control of the pension due to a distrust of his employer and fear that even the BSPS2 may end up in the PPF, to have more flexibility including in relation to death benefits and because Mr C was concerned with the reduction to his pension in early retirement. It outlined the advantages of a transfer, suggesting the new scheme would meet these objectives. So, bearing in mind Mr C's 'moderately aggressive' attitude to risk, it recommended he transfer to a SIPP. Subsequent to the transfer, DCFL would provide ongoing servicing and advice to Mr C in relation to the pension, at a cost.

The transfer went ahead in line with DCFL's recommendation. DCFL provided ongoing servicing until 2021.

Mr C complained in 2021 to DCFL. He said, because of what he'd given up and the significant risk now applicable to his pension, he thought the best advice would've been for him not to transfer and join the BSPS2. So, he thought the advice DCFL had given was unsuitable.

DCFL didn't uphold Mr C's complaint. It said it thought the advice was suitable based on Mr C's needs, objectives and attitude to risk. It said that it considered the transfer risk to be low and that the returns required to match the benefits offered by the DB scheme were modest and that the SIPP had outperformed this level of return since the transfer, which it said showed the transfer was suitable.

Mr C referred his complaint to our service. An Investigator upheld the complaint and said DCFL should compensate Mr C for any loss the transfer had led to as well as pay £300 for the distress caused. He thought Mr C was always likely to receive overall pension benefits of a lower value as a result of transferring. And he didn't think Mr C needed to transfer. The Investigator thought the information suggested Mr C could meet his retirement objectives without transferring and DCFL hadn't made it clear why a transfer was therefore in his best interests. The Investigator also didn't think any of the other reasons for transferring given by DCFL were strong enough to justify the transfer or Mr C accepting a reduction in benefits. And so, the Investigator felt DCFL should've advised against a transfer, and that Mr C would've joined the BSPS2 – in line with the choice he made under the "time to choose" exercise.

DCFL did not accept the Investigator's opinion. It said it believed the advice was suitable. It said, in reference to Mr C being able to meet his retirement objectives without a transfer, him continuing to work for the same employer and contribute to its DC scheme was not certain. It also made the comment that while Mr C was in good health at the time of the advice, this wasn't guaranteed to be the case moving forward, so said it did not accept the relevance of this. DCFL said its advice was based on Mr C's objectives – which it felt the Investigator had not given enough regard to – and believed he would always have looked to transfer, even if it had recommended against doing so.

DCFL also said the BSPS2 was not certain to proceed at the time and so it didn't think using this as the basis for redress was fair. DCFL also argued any losses since it had stopped providing ongoing servicing should not be apportioned to it.

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

What I've decided – and why

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

DCFL has 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 didn't highlight any concerns. It has therefore questioned how our service can come to a different conclusion – that transfer advice was unsuitable. But our role is different to that of the FCA. It is to look at the individual circumstances of a complaint, not a business' processes and practices as a whole, and decide what we consider is fair and reasonable. That is what I've done here.

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

The applicable rules, regulations and requirements

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

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

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

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

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

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for 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, DCFL should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr C's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Financial viability

DCFL said that Mr C was interested in transferring so that he could benefit from growth. But in my view, this would only be in his best interests if he was likely to improve on the guaranteed benefits he was already entitled to.

DCFL talked about Mr C wanting to, and the SIPP meaning he was able to, achieve growth above inflation by transferring – which the DB scheme didn't provide. But that didn't mean Mr C would be better off. The guaranteed annual pension the DB scheme would pay was revalued and escalated in line with inflation. But just achieving growth above inflation from the amount transferred to a personal pension, wouldn't have resulted in his overall benefits exceeding those of the DB scheme. To achieve that, he'd have needed to achieve growth equal to or exceeding the critical yield – how much a new pension would need to grow by each year in order to allow Mr C to purchase equivalent benefits to those the DB scheme guaranteed – each year until retirement.

DCFL say that the critical yields were modest and were likely to be achieved. But, for the reasons I'll explain, I don't agree that this was more likely than not.

DCFL has provided a copy of the transfer value analysis ('TVAS') report – which it was required to produce by the regulator – it instructed at the point of sale. This included the calculation of critical yields.

The TVAS said the critical yield required to match the full escalating annual pension the BSPS2 was likely to provide from age 65, the normal scheme retirement age, was 5.4%. To match the benefits the PPF would provide from age 65, the critical yield if Mr C took a full pension was said to be 5.06%. Or if taking tax-free cash and a reduced pension, 4.87%.

But DCFL said Mr C was interested in retiring at age 57. So, it also calculated the critical yields to match the benefits available at that age. To match the full pension the BSPS2 would've provided at age 57, the critical yield was 6.25%. To match the full pension the PPF could've alternatively provided, the critical yield was 6.17%. Or, if Mr C took tax-free cash and a reduced pension under the PPF at age 57, the critical yield was 5.98%.

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.

The relevant discount rates closest to when the advice was given which I can refer to were published by the Financial Ombudsman Service for the period before 1 October 2017. For 29 full years to retirement, as would be the case if Mr C retired at age 65, the discount rate was 4.7%. For 22 years to retirement, applicable if he retired at 57, the rate was 4.5%. 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 note DCFL recorded that Mr C had a 'moderately aggressive' attitude to risk. But at the time of the advice, his BSPS benefits made up the majority of his private retirement provisions. It was not his only provision. But his employer's new DC scheme was in its infancy. And the BSPS benefits were significantly greater than his other DB scheme. So, I'm not sure his capacity for loss entirely supported the attitude to risk selected.

DCFL says Mr C selected this risk profile and agreed to it. But I'm not sure Mr C necessarily understood enough about investment risk to decide this. He indicated in the fact find that he had some knowledge of investments from what he read in newspapers etc, had limited prior investment experience and had used a financial advisor before. But I can't see that any further context was obtained by DCFL. And Mr C has explained that he used a financial advisor for mortgage advice, and his investment experience was in shares, sold by a high street lender when he had a financial review in relation to a mortgage. So, while he might not have been entirely inexperienced, I don't think I can reasonably say he was an experienced investor.

Having reviewed the information DCFL recorded when assessing attitude to risk, Mr C did indicate a willingness to take some risks and that he wouldn't necessarily be immediately concerned if he saw some losses. But I don't agree with DCFL that this necessarily meant he was a 'moderately aggressive' investor. It suggested he wouldn't panic. But not in my view that he was willing to take high levels of risk. And given that some of the concerns DCFL says Mr C had that led to a transfer were the risk of his pension moving to the PPF, wanting control as he was concerned his employer could reduce his benefits and that the pension would not benefit his family, I'd argue that these things indicate an aversion to and wanting to guard against risk. So, I think a more reasonable assessment of his attitude to risk was that it was likely to be 'balanced'.

I've taken this into account, along with the critical yields, discount rates, composition of assets in the discount rate and the term to retirement. There would be little point in Mr C giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme. But here, given I think Mr C was more likely to have a balanced attitude to risk, and I think therefore returns of around the discount rate or at best the regulators middle projection growth rate are what could be reasonably expected to be achieved, I think the information suggests Mr C was always likely to receive benefits of a lower overall value than the BSPS2 would provide at retirement – at age 65 or 57 – as a result of transferring. And this was also likely to be the case even in the PPF.

DCFL has said the performance of the investments between the transfer being completed and the complaint show that the critical yields were achievable. But past performance is no guarantee for future performance and so I consider the discount rates and the regulator's standard projections to be more realistic in this regard in the long term rather than projecting historic returns forward, particularly over such a long period of time.

So, from a financial viability perspective, I don't think a transfer was in Mr C'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

DCFL has said Mr C was interested in retiring at age 57. But its own notes indicate that this was largely an aspiration. I think most consumers would say they would like to retire early when asked – but Mr C indicated he would only make a decision on this much closer to the time, and hadn't ruled out instead moving job, going part time or even continuing to work if he couldn't feasibly retire. So, I don't think his thoughts or plans were definitive at the time of the advice. And in any event, Mr C could take benefits early, potentially from age 57, under either the BSPS2 or PPF. So, I don't think he needed to transfer in order to access his pension from age 57.

DCFL has said that Mr C was unhappy with the prospect of his pension benefits being reduced if he took early retirement under the DB scheme. It is true that if Mr C drew his benefits at age 57, under either the PPF or the BSPS2 the amount he could take would be subject to an actuarial reduction. But an actuarial reduction is intended 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 benefits at age 57 Mr C would've been receiving his pension for eight years longer. It was a trade-off, rather than a penalty. I don't think, based on what I've seen, that DCFL gave a balanced explanation of this. And, as I've already explained, I think Mr C was also likely to receive benefits of a lower overall value than those he'd have been guaranteed under the BSPS2 or the PPF from age 57 as a result of transferring.

Transferring provided Mr C the flexibility to decide the level of income he took from the pension and not incur an actuarial reduction. But the amount he could take was entirely dependent on the sum available under the pension plan. And the income he took would deplete the plan – potentially leaving him with less than he might need later. Whereas the DB scheme benefits, regardless of which point they started, were guaranteed for life. And I can't see that it was estimated or discussed with Mr C what level of income he could sustainably draw from the pension in order to ensure he had enough funds for his entire retirement.

Taking all of this into account, while I don't doubt Mr C was concerned by his pension potentially being lower if he retired early, if all of this had been properly explained to Mr C, and he'd been in a more informed position, I think he'd have likely been more willing to accept a reduction.

DCFL says Mr C expected to require an income of £1,200 - £1,500 per month in retirement. But again, I can't see that there was any discussion at the point of sale about what level of income he could expect to sustainably draw from the SIPP, after a transfer, in order to achieve this goal. So, I don't think DCFL has evidenced that a transfer was in his best interests to achieve this aim. And I don't think Mr C needed to transfer to meet this objective.

The TVAS said, from age 57, it was estimated that the BSPS2 would provide an annual pension starting at £5,501. So not enough on its own to meet Mr C's estimated income requirement. But again, Mr C hadn't ruled out continuing to work. So, any income from that, would've contributed towards meeting his needs. Mr C also had an interest in two investment properties, which were expected to provide a supplemental income as well. And Mr C was a member of the new DC pension scheme his employer had put in place.

It was over 22 years until he was apparently considering retirement. He and his employer's contributions to this new scheme were equivalent to 16% of his salary. Before even accounting for increases in salary, investment growth or Mr C increasing his contributions, by age 57 this fund was likely to be worth in excess of £147,000. And this fund could've been used flexibly from age 57 – either by meeting his income needs in full and allowing him to draw his DB scheme benefits as close to the normal retirement date as possible to reduce the impact of the actuarial reduction or in conjunction with a reduced, but guaranteed, income from the DB scheme, with his state pension entitlement later providing additional income. And that is before even accounting for Mr C's other DB scheme or Mrs C's pension.

DCFL has said contribution to the employers DC scheme were not guaranteed to continue because Mr C's job may not have been secure. But DCFL argued that the membership of this scheme was one of the reasons Mr C could take risks with his DB scheme. So, it didn't indicate these concerns when it gave advice. And in any event, if Mr C did change employer before age 57, which there was no indication he intended to do, it's reasonable to assume he'd have continued contributing towards his retirement provisions via a new employer.

Ultimately, Mr C was only 35 when DCFL advised him to transfer – over 22 years from apparently when he intended to take any retirement benefits. And his needs were, in my view, largely unknown. And overall, I don't think it was a suitable recommendation for him to give up his guaranteed benefits when he did – particularly given he was always likely to receive benefits of a lower overall value by doing so. If Mr C later had reason to transfer out of his DB scheme, I understand that this would've been allowed under BSPS2. And he could've done so closer to retirement.

Death benefits

DCFL says Mr C didn't want his pension benefits to be lost in the event he passed away. 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 might have seemed an attractive feature to Mr C. But whilst I appreciate death benefits are important to consumers, the priority here was to advise Mr C about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think DCFL explored to what extent Mr C was prepared to accept a lower retirement income in exchange for different death benefits.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr C was married and had children and so the spouse's and dependent's pension provided by the DB scheme would've been useful to his dependents if Mr C predeceased them. I don't think DCFL made the value of this benefit clear enough to Mr C. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was.

The CETV figure might have seemed attractive as a potential lump sum. But the sum remaining on death following a transfer, as well as being dependent on investment performance, would've also been reduced by any income Mr C drew in his lifetime. Mr C was recorded as being in good health. DCFL has said this was not guaranteed so it doesn't accept the relevance of this. But I think it is relevant, as DCFL was required to consider what was in Mr C's best interests. And with no recorded health issues I think expecting Mr C to reach at least his average life expectancy was a reasonable assumption. And with that being the case, given the advice assumed he'd draw benefits flexibly from this pension from age 57, avoiding the reduction for retiring early under the DB scheme – so potentially taking a lot more than the DB scheme would've provided – it appears likely the fund would've been significantly depleted by the time it was likely to be passed on to any dependents.

In addition to the ongoing benefit of a guaranteed spouse's or dependent's pension the DB scheme would've provided, the fact find also recorded that Mr C had death in service benefits. And the new defined contribution pension he was a member of would've also provided alternative death benefits by way of a lump sum. So, it appears his family was already to be provided for by way of a lump sum. And, if Mr C didn't think these were enough and genuinely wanted to leave a further legacy, which didn't depend on investment returns or how much of his pension fund remained on his death, life insurance could've been considered - as given his age and apparent good health this appears likely to have been obtainable at a reasonable price.

DCFL said in the suitability report Mr C was more concerned with his DB scheme benefits not being lost. And so, life insurance wasn't considered further. But I think if a more appropriate explanation of the existing benefits had been given, and Mr C put in an informed position, his opinion might've been different.

Overall, I don't think different death benefits available through a transfer to a SIPP justified the likely decrease of retirement benefits for Mr C.

Control or concerns over financial stability of the DB scheme

I think Mr C's desire for direct control over his pension benefits was overstated. While he'd held some stocks and shares previously, I cannot see that Mr C had an interest in or the knowledge to be able to manage his pension funds on his own. Indeed, DCFL continued to manage his SIPP on his behalf after the transfer. So, I don't think that this was a genuine objective for Mr C – it was simply a consequence of transferring away from the DB scheme.

I think this objective was more linked to the uncertainty about the BSPS. And DCFL has said that Mr C was concerned about his pension ending up in the PPF – particularly if the BSPS2 did not go ahead or did, but subsequently failed – and had lost trust in his employer and its management of the fund.

I don't doubt Mr C, like many of his colleagues, was concerned about his pension. By the time he had spoken to DCFL, he'd already had to make an important and significant choice about his pension – which I doubt is something he'd done or contemplated before. Which likely played a part in Mr C asking for advice even after making that choice.

I also don't doubt Mr C had likely heard potentially negative things about the PPF. But, contrary to what DCFL argues, at the time it spoke to Mr C, I think it was pretty clear to the parties that the BSPS2 was likely to go ahead. The "time to choose" exercise had concluded. And I think the relevant parties, not least the trustees, were confident the BSPS2 would go ahead.

The BSPS2 should've alleviated some of the concerns Mr C might've had about the scheme moving to the PPF – particularly if DCFL had done more to explain the significant distinction between Mr C's employer and the trustees of the BSPS2.

DCFL has said that Mr C was also concerned that the BSPS2 would eventually fail and he may end up in the PPF. But, while his experiences with BSPS to that point might've made him sceptical, there wasn't anything at the time to suggest that the BSPS2 would experience the same troubles the BSPS had. And that was why it was even more important for DCFL to give Mr C an objective picture and recommend what was in his best interests.

In any event, even if there was a chance the BSPS2 wouldn't go ahead, I think that DCFL should've 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, while a reduction on what he'd have been due under the BSPS, was still guaranteed and not subject to investment risk. And he was unlikely to improve on the overall pension benefits the PPF would've provided by transferring out. So, I don't think that any concerns Mr C might've had about the PPF should've led to DCFL recommending he transfer out of the DB scheme altogether.

Suitability of investments

DCFL recommended that Mr C invest his SIPP in a particular way. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr C, it follows that I don't need to consider the suitability of the investment recommendation. This is because Mr C should, in my view, have been advised not to transfer so the investments wouldn't have arisen if suitable advice had been given.

DCFL has said that it shouldn't be responsible for any losses stemming from those investments after it ceased managing the SIPP on Mr C's behalf. But again, the investments would not have arisen at all were it not for DCFL's advice. So, I don't agree that it's responsibility for loss stemming from its advice ceased when it ended its agreement with Mr C.

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 C. But DCFL wasn't there to just transact what Mr C might have thought he wanted. The adviser's role was to understand Mr C's circumstances, separate his concerns stemming from the consultation and his unconfirmed plans for a retirement that was over 20 years away from his genuine needs and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr C was suitable. He was giving up a guaranteed, risk-free and increasing income. And this action was irreversible. By transferring, Mr C was very likely to obtain lower retirement benefits and, in my view, there were no other particular reasons which would justify a transfer and outweigh this. So, I don't think it was in Mr C's best interests for him to transfer his DB scheme to a SIPP. And I think DCFL should've recommended that he not transfer.

Mr C had over 22 years before he reached the age at which he'd indicated he might like to retire. But his plans were in any event unconfirmed. I don't think that it would've been in his interests to accept the reduction in benefits he would've faced by moving with the BSPS to the PPF, as this might not have been offset by the more favourable reduction for very early retirement – because his plans were not set. And by opting into the BSPS2, Mr C would've 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. So, I think if DCFL had correctly advised him against transferring Mr C would've have moved his pension benefits to the BSPS2, in line with the choice he'd made as part of the "time to choose" exercise. And I don't agree with DCFL that it is unreasonable to base redress on this – given, in the circumstances, it is what I think is more likely than not to have happened had there been no error.

Of course, I have to consider whether Mr C would've gone ahead anyway, against DCFL's advice. DCFL argues that he would've always sought to transfer and had spoken to another adviser previously.

I’ve thought about this carefully. As I’ve mentioned, Mr C asked DCFL for advice after making a decision to join the BSPS2, suggesting he was unsure of the choice he’d made. And he has said as much when contacting our service, saying he was thinking about transferring when speaking to DCFL. And he may well have already spoken to another adviser. But I don’t think that means he would always have transferred. Rather I think it shows that he wanted professional advice. And I’m not inclined to say he’d have disregarded that.

I’ve seen documents that suggest Mr C and DCFL discussed the “pros and cons” of transferring. And a document was completed indicating Mr C had been made aware of the risks involved. But ultimately DCFL advised Mr C to transfer out, and I think Mr C relied on that advice.

I’m not persuaded that Mr C’s concerns about the consultation or the PPF, or the potential appeal of alternative death benefits, control or flexibility were so great that he would’ve insisted on the transfer knowing that a professional adviser, whose expertise he had sought out, didn’t think it was suitable for him or in his best interests. And if DCFL had explained that Mr C was always unlikely to exceed the guaranteed benefits available to him by transferring, I think that would’ve carried significant weight. So, I don’t think Mr C would have insisted on transferring out of the DB scheme.

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

Our Investigator recommended that DCFL also pay Mr C £300 for the distress caused by the unsuitable advice. I don’t doubt that Mr C has been caused distress and concern by finding out the advice may not have been suitable – particularly given the circumstances and uncertainty under which he first asked for this advice. And I’m conscious this upset wouldn’t have happened but for the unsuitable advice. So, in the circumstances, I think the award the Investigator recommended in respect of this is fair.

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 DCFL’s unsuitable advice. I consider Mr C would have most likely joined the BSPS2, given he had elected to do so as part of the “time to choose” exercise, if he’d been given suitable advice.

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

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

DCFL 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 C 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 C's acceptance of the decision.

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

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr C'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 C 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 C within 90 days of the date DCFL 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 DCFL to pay Mr C.

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 DCFL to carry out a calculation in line with the updated rules and/or guidance in any event.

In addition, DCFL should pay Mr C £300 for the distress caused by the disruption to his retirement planning.

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 C the compensation amount as set out in the steps above, up to a maximum of £160,000.

Where the compensation amount does not exceed £160,000, I would additionally require D C Financial Limited to pay Mr C 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 C 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 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 this decision, the money award becomes binding on D C Financial Limited.

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 14 March 2023.

Ben Stoker
Ombudsman