DRN-3675660

Financial Ombudsman Service

The complaint

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

What happened

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

At the time the BSPS scheme closed to new accruals in March 2017, Mr D had 26 years and 5 months of pensionable service with his employer which gave him a total (index linked pension) of £17,552 per year. After the DB scheme closed to new accruals in March 2017, Mr D joined his employer's Defined Contribution ('DC') scheme. At this point Mr D was aged 53, was unmarried with two non-dependent children and was thinking about retiring from British Steel at 55 to take up work as a self-employed electrician or personal trainer.

In June 2017 Mr D had received a Cash Equivalent Transfer Value ('CETV') from the DB scheme of £432,019.05, valid for 3 months.

DCF completed a fact-find in late July 2017 to gather information about Mr D's circumstances and objectives. Mr D's circumstances at the time were noted as follows:

- He was unmarried with two grown up children who were no longer living with him.
- He was employed as a team leader earning £40,000 per year.
- His approximate monthly disposable income was £800.
- His house was valued at £135,000 with an outstanding mortgage of £72,000 with 11 years to run.
- He was paying £180 per month for a car loan that had two years to run and £130 for a homeowner loan.
- He had £8,000 in savings and £20,000 in a cash ISA along with £10,000 in shares.
- He was recorded as being a member of his employer's DC scheme, making contributions of 10% per year along with employer contributions at the same rate.
- That he considered himself a knowledgeable and experienced investor whose financial objective was noted as planning for retirement.
- That he didn't want to risk the Pension Protection Fund ('PPF'), or be subject to reduction factors (in his pension), and wanted to be able to leave his remaining pension fund to his children.

DCF also carried out an assessment of Mr D's attitude to risk ('ATR'), which it deemed to be 'moderate' or a risk level of 7 on a scale of 1 to 10. It also thought he had the capacity for loss as determined by his ATR.

On 4 August 2017 DCF provided Mr D with its suitability report and advised him to transfer his pension benefits into a personal pension and invest the proceeds with a provider ('L'); 25% in a cautious fund and 75% to be actively managed by DCF. The suitability report said the reasons for this recommendation to Mr D were, in summary:

- To prevent the loss of flexible access should the BSPS scheme move to the PPF;
- To have control of his pension given the uncertainty surrounding the BSPS scheme.
- To be able to access Tax Free Cash ('TFC') without having to take an income at the same time – unlike the BSPS scheme.
- To avoid the penalties for taking retirement before the scheme's normal retirement date ('NRD') of 65.
- To avoid the inflexible death benefits of the DB scheme and be able to pass any unused pension fund onto his children.

Mr D accepted the recommendation and signed the transfer forms and a client agreement on 28 July 2017. The forms were submitted to L and Mr D signed a declaration on 7 August 2017 to say that he had received and read the suitability report. DCF were remunerated with an initial advice fee of £8,000 and an annual ongoing adviser fee of 1% of the fund value. L also charged an annual fee of 0.25%.

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

In September 2020, Mr D accessed £30,000 of TFC to make some home improvements and help his son pay his builder's bill. Mr D remains employed and has not retired. He is now aged 58.

In November 2020, Mr D's representative complained to DCF that the advice he'd been given to transfer out of his DB scheme had been unsuitable and that the transfer shouldn't have been recommended in his circumstances as they were at the time.

DCF looked into Mr D's complaint but didn't agree that it should be upheld. It said the advice it had given Mr D was tailored to his personal circumstances and had taken into account his current and future plans, needs and objectives. It said Mr D's main objective was to leave his employment and start his own business and that he felt accessing his TFC at age 55 would help him achieve this goal. DCF said Mr D had lost all faith with his employer and felt strongly against remaining in the scheme. It said he wanted flexibility, better death benefits and to avoid the PPF. DCF said the transfer met Mr D's objectives so was suitable.

Unhappy with the outcome of DCF's investigation, Mr D complained to this service. Our Investigator looked into Mr D's complaint and recommended that it was upheld. He said he thought the transfer wasn't suitable for Mr D because it wasn't financially viable. He also thought DC hadn't sufficiently explored Mr D's objective of starting his own business or considered alternative means of achieving his aims. Whilst he accepted that the death benefits under the personal pension were potentially better than those under the DB scheme (given Mr D's own personal circumstances) he thought they didn't make the transfer suitable especially given that it seemed clear that Mr D would be unable to match, or improve, on his BSPS benefits. He also noted that DCF hadn't investigated the option of Mr D leaving a lump sum to his children by other means. Our Investigator recommended that DCF should compensate Mr D for the losses he incurred by transferring his DB pension and that compensation should be based on him having opted to join the BSPS2. He also recommended DCF pay Mr D compensation of £250 for the distress and inconvenience this matter had caused him.

DCF responded and made the following comments:

- It had thoroughly advised Mr D of the advantages and disadvantages of his options, and their associated risks, prior to the transfer.
- That BSPS2 had not been confirmed at the time it was advising Mr D.
- To date Mr D's pension had achieved annual gross growth per year of 7.37% which compares favourably to the discount rate of 3.3% for 6 years to retirement and 3.9% for 11 years to retirement.
- The critical yield figures produced at the time of the advice were based on the BSPS which has ceased to exist and wasn't an option for Mr D to remain a member of. The critical yields for BSPS2 were much lower.
- It was important to Mr D to have access to a lump sum should the opportunity arise for him to run his own business; this was a key objective for Mr D.
- If BSPS moved to the PPF this would mean there would be no future opportunity available to transfer.
- With both PPF and BSPS2, to access TFC Mr D would also have had have taken an income at the same time.
- Mr D demonstrated he had a good understanding of investment risk.
- It was of high importance to Mr D that his fund benefit himself and subsequently his children. Additional life cover was not considered as it wasn't deemed appropriate.
- It produced comparisons of estimations of what the BSPS2 could pay at ages 59 and 63 in comparison with Mr D's personal pension; the latter was projected to pay him a larger pension in both cases.

Our Investigator considered what DCF had said in response to his view but wasn't persuaded to change his mind about Mr D's complaint. He said he could only look at Mr D's circumstances as they were at the time. He also said that whilst Mr D may have been inclined to transfer his pension (given his concerns about the financial position of the BSPS) it was DCF's responsibility to make sure the transfer was in his best interests. Our Investigator said that transferring his DB scheme and losing his guaranteed benefits couldn't be justified by the objective of wanting to set up a business which, in any event, he wasn't committed to doing at the time of the transfer and for which he had other monies available to him which he could have used.

Our Investigator went on to say that whilst Mr D had indeed withdrawn £30,000 in TFC, the flexibility that allowed him to do so didn't override the fact that the purpose of a pension was to provide an income in retirement and not to act as a form of accessible savings. He said past investment performance was no guarantee of future performance whilst, in contrast, Mr D's DB scheme benefits were guaranteed. Our Investigator reiterated that legacy planning wasn't a justification for transferring. And Mr D was also a member of his employer's DC scheme which, with up to 12 years to go until he retired, could be used in this way should he so wish. So a degree of legacy planning was available in any event without the need to transfer. Our Investigator remained of the view that DCF should compensate Mr D for the losses he incurred by transferring his DB pension and that compensation should be based on him having opted to join the BSPS2.

DCF replied to our Investigator to say it still disagreed with his view. It said our Investigator's assumption that Mr D had been inclined to transfer wasn't based on any fact. It also said that if it was correct that Mr D had access to other monies in order to start a business then why did he request a withdrawal of TFC from his pension in September 2020. It said it had advised him at this point to explore other ways of raising the money but that he'd insisted on proceeding because he was unable to do so. DCF said the option of BSPS2 post-dated the advice it gave Mr D.

Our Investigator replied to say he had previously commented on the concerns Mr D had had about the financial position of BSPS and his likely reasons for believing he wanted to transfer. He also said he couldn't comment on what Mr D had done in September 2020; he noted though that in July 2017, Mr D was documented as having £38,000 of accessible monies along with £800 surplus monthly income. Our Investigator said these were the monies he was referring to when he said Mr D had other monies to assist him with starting a business. In respect of BSPS2, our Investigator accepted that it wasn't a guaranteed choice until January 2018 but it had been announced as a possibility by the time DCF was advising him. This being the case had he not been advised to transfer his DB scheme he thought Mr D would have opted to transfer to BSPS2 when he received his options letter in October 2017. So he remained of the view that DCF should compensate Mr D on this basis.

Mr D's representative also submitted some additional comments. It said that had Mr D been properly advised he would not have accessed his TFC in September 2020, would have chosen BSPS2 and not accessed those benefits until his NRD at age 65. It said this was the age that should be used when calculating Mr D's compensation.

DCF also sent some further comments to our Investigator. It said any compensation calculation needed to be based on the PPF, not BSPS2 because BSPS2 didn't exist at the time the advice was given.

The complaint was referred to me to make a final decision.

What I've decided – and why

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

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

The applicable rules, regulations and requirements

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

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

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

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

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

Having considered all of this and the evidence in this case, like our Investigator, I've decided to uphold the complaint for largely the same reasons.

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, DCF should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr D's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Financial viability

DCF carried out a transfer value analysis report (as required by the regulator) showing how much Mr D's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield). This analysis was based on his existing BSPS scheme benefits, but Mr D didn't have the option to remain in the BSPS; he either needed to opt into BSPS2 or move with the existing BSPS scheme to the PPF.

DCF has argued that at the time it was advising Mr D, the terms of the BSPS2 scheme weren't known aside from the fact they were predicted to be less favourable than the existing scheme. Whilst the details of what BSPS2 would entail weren't known, the restructuring of the BSPS had been ongoing for a significant amount of time by the time Mr D took advice and the details were likely to be announced in the coming months. But I can't see that DCF cautioned Mr D about transferring ahead of knowing what the BSPS2 would entail. So, I think DCF should have advised Mr D to wait and see what the terms of BSPS2 were when they were announced so that he could see if retirement under the new scheme was affordable or not and so he could make a fully informed choice about what action was in his best interests.

I appreciate that Mr D's CETV expired at the end of September 2017, so DCF may argue that it had to provide its advice to Mr D before this. But I don't think the expiry of the CETV should've been a barrier to DCF providing Mr D with suitable advice, which I think would involve it considering all of his options before advising him to make an irreversible decision to transfer out of the scheme.

According to the fact-find and the suitability report Mr D wanted to retire from British Steel early – as early as age 55 as he was 'possibly' considering becoming a self-employed electrician or personal trainer for which at which point he wanted to take 25% of his pension as TFC. Mr D wasn't sure what income he would need at that stage. But DCF says the only way for Mr D to achieve this objective was to transfer his scheme to a personal pension; but I'm unable to agree.

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

Despite Mr D saying that he was interested at retiring early at age 55, the suitability report only set out the relevant critical yields for retirement at ages 65 and 60; these were 8.61% and 15.37% respectively in order to match the benefits from Mr D's existing DB scheme. However, as I've said above, I don't think these figures were particularly relevant as remaining in the scheme wasn't an option. But nevertheless, I don't think Mr D could reasonably expect to achieve this level of growth if he transferred to a personal pension.

The critical yield required to match the benefits provided by the PPF at age 65 was 4.91% if a full pension was taken and 4.38% if a reduced pension and TFC was taken. DCF didn't provide the critical yield for the PPF benefits at age 60 or at age 55, which it should have in order for Mr D to have a meaningful comparison. But given that the funds would be invested for less time and would be required to pay income for longer, I think the critical yields required to match the PPF benefits at ages 55 and 60 was likely to be significantly higher than 4.38%.

The critical yield of 4.38% per year at age 65 compares with the discount rate of 3.9% per year for 11 years to retirement in this case. For further comparison, the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%. I've taken this into account, along with the composition of assets in the discount rate, Mr D's attitude to risk and also the term to retirement. Mr D was assessed as having a moderate attitude to risk; but given he said wanted to retire in the short-term, Mr D had no time or capacity to build up his fund or tolerate any losses. So I think that assessment was unreasonable.

There would be little point in Mr D giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme. But here, given the discount rate of 3.9% and the regulator's middle projection rate of 5%, even if I accepted Mr D had a moderate attitude to risk, I think that Mr D was most likely to receive benefits of a lower overall value than those provided by the PPF by transferring his DB scheme to a personal pension if he retired before age 65, as was his plan. And even if he did continue working until age 65, I think the opportunity to improve on the PPF benefits was limited.

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

DCF said in its suitability letter: *"The critical yield required is high and it would be very unlikely that an investment could provide a return to match the benefits you are giving up."* So it is clear to me that DCF realised that by transferring, Mr D would be unable to match the benefits he was giving up.

DCF provided analysis in the TVAS of the critical yields Mr D's pension would need to attain for retirement at ages 60 and 65 and along with analysis of how long his pension last if he drew the same income (indexed linked) as provided by his DB scheme (without taking any TFC). If he retired at age 60 his pension would run out by the time he was 86 and if he retired at 65 it would run out by the time he was 92. If Mr D been advised to remain in BSPS and transfer to the PPF however, his pension would never have run out, regardless of how long he lived.

I appreciate the TVAS analysis is based on matching the existing BSPS benefits and that one of the benefits included was a 50% spouse's pension. Although Mr D wasn't married at the time of the advice, that he would do so at some point in the future can't be completely discounted. I note too that the TVAS analyses the 'hurdle rate' (the rate of return required to purchase an annuity to provide benefits of equal value to the estimated benefits provided by the existing scheme assuming no spouse's pension and no index linking). The hurdle rate to age 60 was 4.48% and to age 65 was 3.03%. So only the hurdle rate to age 65 is below the discount rate I have referred to above. But only by using a method of comparison that didn't match the guaranteed benefits in Mr D's BSPS, could it be argued that the DB scheme transfer was financially viable. But of course, index linking is a very valuable guarantee so I don't accept the hurdle rate to NRD at age 65 demonstrates that the transfer was suitable and in Mr D's best interests.

While DCF has referred to the past performance of the funds it recommended to him, as DCF will know, past performance is no guarantee for future performance and so I consider the discount rates and the regulator's standard projections to be more realistic in this regard in the long term rather than projecting historic returns forward, particularly over such a long period of time.

In summary, even if the BSPS had moved to the PPF and Mr D's benefits were reduced as a result, if he retired early he would have still been very unlikely to match, let alone exceed, those benefits by transferring to a personal pension. By transferring his pension I think it was highly likely that Mr D would be financially worse off in retirement.

For this reason alone a transfer out of the DB scheme wasn't in Mr D'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, as DCF has argued here. I've considered this below.

Flexibility

It seems one of the main reasons that DCF recommended this transfer was for the flexibility and control it offered Mr D. Having considered the evidence, I don't think Mr D needed to transfer his DB scheme to a personal pension so he could have flexibility in retirement.

I think it's important to note here that Mr D did not have concrete plans to retire at 55. Indeed, he is now aged 58 and has still not retired. That doesn't mean that I'm using hindsight to refute the suitability of the advice, rather I'm highlighting that Mr D's plans were not set in stone and were subject to change. Mr D was taking advice because he needed to make a decision about his future benefits, so he required advice as to what was in his best interests.

It's evident that Mr D could not take his DB scheme benefits flexibly. Although he could choose to take TFC and a reduced annual pension, Mr D had to take those benefits at the same time. But I'm not persuaded that Mr D had any concrete need to take TFC and defer taking his income at the time of the advice. There is reference to Mr D wanting to take TFC to help him start a new business in the future, but again, I don't think this was a concrete plan that Mr D needed to act upon there and then, it was simply an idea. So, overall, this seems more of a 'nice to have' rather than a genuine objective. And an adviser's job isn't to simply facilitate a customer's wants. Any objectives should be thoroughly interrogated to determine if they are realistic or not or achievable through other means. And ultimately the adviser had to determine whether giving up the secure, guaranteed benefits of available through the BSPS (and then the PPF) was in Mr D's best interests.

I don't think Mr D had a genuine need to access his TFC early so I think he could have left his funds invested until a later date, or until he was ready to draw his pension. I say this because it is clear from the fact-find that Mr D had, at the time of the advice, access to various savings that totalled £38,000, along with a monthly disposable income of £800, should he need to make any capital expenditure. He had a mortgage and two loans, none of which were causing him any financial issues. I can see his mortgage, at the time of the advice, ran until he was aged 64. But I can't see that DCF questioned Mr D about how intended to service his mortgage – and his other loans – if he took retirement at age 55. It is possible that DCF will say that Mr D intended to become self-employed, thereby giving him an income to be able to service his loans. But as recorded on the fact find, that he would do so, was merely a possibility. DCF recorded no real contemporaneous information about this objective which is surprising given it was one of the primary reasons to justify the transfer.

Whilst I note that DCF has told us it had many conversations with Mr D about purchasing premises from where he could run a gym, those conversations weren't documented.

Nor can I see that DCF explored other means of Mr D paying for any intended capital expenditure his possible future self-employment might require, or that it investigated with him the real timetable for needing the TFC, or whether he actually needed it at all. Overall I can't see any reason why Mr D needed access to his TFC at age 55 nor can I see that DCF made any real attempt to discover one. I think, given Mr D's financial situation at the time, the financial objectives for transferring his pension to access the TFC aren't justified, particularly when he could've used his savings – which were likely to be achieving minimal returns at the time – to pay for any items of capital expenditure.

Mr D's full DB pension (if he took no TFC) at normal retirement age of 65 was forecast by DCF to be £24,058 per year. If he took early retirement this figure was subject to a downward adjustment of 30% if retiring at age 55 or an 18% one at age 60 (the TVAS stated that retiring at age 60 would provide an estimated pension of £21,154).

Of course, these figures are moot given that the scheme they were based on was going to move into the PPF. But if DCF wanted to discharge its regulatory obligations to Mr D properly then it should have conducted its full analysis based on the scheme moving to the PPF (because that was certain to happen) which would have allowed Mr D to make a proper comparison. That way he could have seen what benefits he would have been entitled to if retiring at 55. All I do know is that at 65, Mr D could've taken an income of £20,271 under the PPF or an income of £15,737 plus TFC of £104,612. Analysing a scheme that was about to cease to exist in its current state wasn't having due regard to Mr D's information needs. And it's worth noting that the early retirement factors under the PPF were more favourable than the existing scheme.

I've seen no evidence that DCF explored Mr D's retirement objectives with him. Most people, if asked, say that they would want to retire as early as possible. But if DCF had had full regard to Mr D's information and communication needs I think it should have explored his actual retirement plans and what was important to him. I can't see that DCF determined what income Mr D would require in retirement. And it should have provided him with more information about the PPF, and its associated guarantees, and what he could expect by way of a pension at certain ages, so that Mr D could make an informed choice. But without this information, Mr D chose to transfer his scheme in part because (as noted on the fact-find) he had concerns about the PPF. But I can't see evidence of any explanation or reassurance given to him by DCF about the benefits the PPF offered.

So, DCF should have investigated Mr D's financial retirement needs in greater depth and provided him with forecasts for what a PPF pension and TFC would look like at certain ages. Whilst Mr D said he would have liked to retire at 55 it is possible that he might have found

retiring under the PPF to have been favourable enough to have met his needs (not to mention that it would be index linked). And when Mr D's state pension became payable it would have been in addition to his monthly pension and would not need to be used to reduce any drawdown. A pension from the PPF would also have been for life, unlike Mr D's personal pension which could well have run out before he died. But the information Mr D received from DCF was incomplete such that he was unable to make an informed decision.
Overall, I don't think Mr D had an immediate need for flexibility such that transferring out of the DB scheme was in his best interests. If Mr D genuinely needed to take TFC when he retired in order to put it into his new venture, then he could've taken TFC from the PPF. And I haven't seen anything to persuade me that Mr D wouldn't have also benefitted from taking a guaranteed income at the same time to meet his essential expenditure whilst his new business was getting started. So, it seems to me that accessing his DB pension in the way it was intended would've been suited to his needs when he retired. And I think DCF at least ought to have waited for details of the BSPS2 so Mr D could make a genuine informed decision about what would best suit his needs. And it's evident that he could also take TFC and a reduced pension from the BSPS2 (although I appreciate that wasn't known at the time).

Death benefits

According to the fact-find, Mr D said he would like the ability to leave any remaining pension funds to his children.

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 were likely an attractive feature to Mr D. But whilst I appreciate death benefits are important to consumers, and Mr D might have thought it was a good idea to transfer his DB scheme to a personal pension because of this, the priority here was to advise Mr D about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think DCF explored to what extent Mr D was prepared to accept a lower retirement income in exchange for higher death benefits.

In Mr D's circumstances as they were at the time it is arguable that the death benefits offered under a personal pension were more favourable than those under his DB scheme. But, as the analysis in the TVAS shows, there may not have been a large sum left, or the fund may have been depleted, if Mr D lived a long life. In any event, DCF should not have encouraged Mr D to prioritise the potential for higher death benefits through a personal pension over his own security in retirement.

Furthermore, if Mr D genuinely wanted to leave a legacy for his children, which didn't depend on investment returns or how much of his pension fund remained on his death, I think DCF should've instead explored life insurance. It's possible this may not have been affordable given Mr D's age, but it should have been explored regardless. And I can't see that there was any documented discussion about the fact that Mr D was now a member of his employer's defined contribution scheme which, had the potential to grow depending on when Mr D retired. I've seen no evidence of any discussion with Mr D about using his DC scheme in this way should he so wish. So a degree of legacy planning was available in any event without the need to transfer.

In any event, whilst death benefits might be important for consumer, there generally shouldn't be a disproportionate emphasis on this compared to their own retirement needs. Overall, I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr D. And I don't think that insurance was properly explored as an alternative.

Control or concerns over financial stability of the DB scheme

I think Mr D's desire for control over his pension benefits was overstated. Whilst Mr D ticked the box on the fact find to say that he was a knowledgeable and experienced investor I've seen no evidence that bears this out. It appears to me that the concept of 'control' to Mr D was related to the security of his pension due to workplace rumours about what was happening to the scheme. So, I don't think that control of his pension was a genuine objective for Mr D – it was simply a consequence of transferring away from his DB scheme.

I don't doubt that Mr D was concerned about his pension. Lots of his colleagues at the time were transferring out of the scheme and he was worried his pension would end up in the PPF. He said this is why he wanted to move the pension into his control. So it's quite possible that Mr D was leaning towards the decision to transfer. However, it was DCF's obligation to give Mr D an objective picture and recommend what was in his best interest.

Mr D was particularly concerned about BSPS moving to the PPF. But from what I've seen, DCF didn't provide Mr D with an objective picture about the PPF and what this might mean for him specifically. Mr D was clearly interested in retiring early, possibly at age 55, and early retirement reductions were in fact lower in the PPF than in the BSPS but this wasn't shared with Mr D. And DCF should've explained to Mr D he was still unlikely to exceed the benefits available to him through the PPF if he transferred out. Overall, I don't think DCF did much to alleviate Mr D's concerns and fears. Instead, it appears to have used these concerns to justify the transfer.

Furthermore, it's evident that the BSPS2 was likely to be announced in the coming months, which ought to have allayed Mr D's fears about the PPF. The BSPS2 would still provide guaranteed, escalating benefits, which although would've been lower than the previous scheme, were valuable and risk-free. So, I think DCF ought to have reassured Mr D that his benefits moving to the PPF was not a certainty. And if DCF had delayed providing the advice, Mr D would've known he would be given the choice to opt into the BSPS2 in the near future.

Summary

I accept that Mr D was attracted by the idea of transferring. He might have heard from colleagues that this is what they were doing. And 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 D. But DCF wasn't there to just transact what Mr D might have thought he wanted. The adviser's role was to really understand what Mr D needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr D was suitable. He was giving up a guaranteed, risk-free and increasing income if he moved with the scheme to the PPF. By transferring, Mr D was very likely to obtain lower retirement benefits and in my view, there were no other particular reasons which would justify a transfer and outweigh this. Mr D had a vague objective to retire early to take TFC and fund a new business venture, but I don't think his plans were fully formed. And I don't think DCF interrogated this objective in any meaningful way – it didn't establish how much TFC or income Mr D would need, so it couldn't offer any real insight into whether Mr D could've met this objective by moving with the scheme to the PPF or the new BSPS2, or by using the savings already available to him. So, I don't think Mr D's plans or ambitions were concrete enough for DCF to say it was in his best interests to give up his guaranteed benefits and transfer out of the scheme.

I appreciate that at the time the advice was given there was a lot of uncertainty around the pension scheme and I've fully taken into account that Mr D was likely keen to transfer out as he was worried about his pension and colleagues were telling him this was a good idea. However, it was the adviser's responsibility to objectively weigh up the options for Mr D. He should have advised him what was best for his circumstances and explained what he was giving up in the BSPS and that moving to the PPF was not as concerning as he thought. For the reasons given above, I think this advice should have been to remain in the BSPS.

If Mr D had stayed in BSPS, he would have shortly after had the choice to move to the PPF or transfer to a new scheme, the BSPS2. I carefully considered what Mr D likely would have done and on balance I think he would have opted to join the BSPS2. I say this I don't think Mr D's retirement plans were fully formed. So, I don't think that it would've been in his interest to accept the reduction in benefits he would've faced by the scheme entering the PPF, as it wouldn't be offset by the more favourable reduction for very early retirement. And by opting into the BSPS2, Mr D would've retained the ability to transfer out of the scheme if he needed to. The annual indexation of his pension when in payment was also more advantageous under the BSPS2. So, I think DCF should've advised Mr D to opt into the BSPS2.

DCF says the BSPS2 was not certain to proceed and that it is unreasonable for us to say Mr D should've been advised to join this scheme as it wasn't a genuine option. I appreciate that the BSPS2 hadn't been confirmed when the advice was given. But I think it was clear to all parties that talks were progressing well and it was likely to be going ahead. And in mid-September 2017, before Mr D's CETV expired it was announced that Mr D would soon be given the chance to opt into the scheme. So, contrary to what DCF has said, I do think this was an option that it could've recommended at the time. And I don't think DCF could be said to be acting in Mr D's best interests by ignoring the progress of the new scheme and failing to consider whether opting into this scheme was suitable for him.

Of course, I have to consider whether Mr D would've gone ahead anyway, against DCF's advice. DCF says Mr D made an informed decision to transfer, so it thinks he would've chosen to do so even if it had advised him against it.

I've considered this carefully. Mr D was no doubt unhappy with the situation regarding the BSPS. And may have had a negative opinion of his employer and how it had communicated and dealt with him and his colleagues. The BSPS scheme and its trustees were though not the same as his day-to-day employer. And despite what DCF says I think Mr D was an inexperienced investor who sought independent advice and guidance. Mr D was concerned about the security of his pension – it made up almost all of his retirement provision, and I don't think he would've wanted to take any unnecessary risk with it. So, if DCF had provided him with clear advice against transferring out of the BSPS, explaining why it wasn't in his best interests, I think he would've accepted that advice.

I'm not persuaded that Mr D's concerns about his employer or the PPF were so great that he would've insisted on the transfer knowing that a professional adviser, whose expertise he had sought out, didn't think it was suitable for him or in his best interests. And if DCF had explained that Mr D was always unlikely to exceed the guaranteed benefits available to him by transferring, and that the uncertainty over his requirements meant transferring at that time was not in interests and that the other things he'd expressed worry about were not things he needed to be as concerned about as he was, I think that would've carried significant weight. So, I don't think Mr D would have insisted on transferring out of the DB scheme.

For this reason, I think DCF should compensate Mr D for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology. And it's the benefits offered by the BSPS2 at age 65 which should be used for comparison purposes. This is because I know that Mr D hasn't yet retired, has said he remains happy at work and has no stated intention to retire at present.

I agree with our Investigator that Mr D will have been caused some distress and inconvenience by DCF's unsuitable advice so I think that DCF should pay him compensation of £250 in recognition of any trouble and upset it has caused him.

Putting things right

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and has set out its proposals in a consultation document - CP22/15-calculating redress for non-compliant pension transfer advice**.** The consultation closed on 27 September 2022 with any changes expected to be implemented in early 2023.

In this consultation, the FCA has 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.

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 whilst the consultation takes place. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with any new rules and guidance that may come into force after the consultation has concluded.

We've previously asked Mr D whether he preferred any redress to be calculated now in line with current guidance or wait for any new guidance /rules to be published. Mr D didn't make a choice, so as set out previously I've assumed in this case he doesn't want to wait for any new guidance.

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

A fair and reasonable outcome would be for the business to put Mr D, as far as possible, into the position he would now be in but for DCF's unsuitable advice. I consider Mr D would have most likely opted into the BSPS2 if suitable advice had been given.

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

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

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

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

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

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

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

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

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

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

DCF should also pay Mr D compensation of £250 for the distress and inconvenience its unsuitable advice caused him.

My final decision

Determination and money award: I intend to uphold this complaint and require D C Financial Limited to pay Mr D the compensation amount as set out in the steps above, up to a maximum of £160,000.

Where the compensation amount does not exceed £160,000, I would additionally require D C Financial Limited to pay Mr D any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I would only require D C Financial Limited to pay Mr D any interest as set out above on the sum of £160,000.

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

If Mr D accepts this decision, the money award becomes binding on D C Financial Limited.

My recommendation would not be binding. Further, it's unlikely that Mr D can accept my decision and go to court to ask for the balance. Mr D may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 22 December 2022.

Claire Woollerson
Ombudsman