DRN-3683335

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') and another small pension 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.

Mr C is being represented by a third party but for ease of reading this decision I'll largely refer to representations as being made by Mr C.

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.

On 11 August 2017, Mr C's employer confirmed the terms of the RAA – which had been agreed in May 2017 – had been signed. This announcement included confirmation that agreement had also been reached about the sponsorship, by Mr C's employer, of the BSPS2.

Also on 11 August 2017, Mr C obtained a summary of the transfer value for his BSPS benefits. This said his benefits had a cash equivalent transfer value ('CETV') of £37,839.28.

Shortly after this Mr C asked DCFL for advice about his pension arrangements. Largely it was Mr C's BSPS benefits that were discussed. But DCFL also advised Mr C in relation to the transfer of a separate small personal pension at the same time.

On 25 August 2017, an important update was issued in respect of BSPS transfer values. This explained that the expected lump sum payment into the BSPS by Mr C's employer was likely to result in an improvement to transfer values. And for those with unexpired transfer values, as in Mr C's case, updated valuations would be issued in around October 2017, which would be guaranteed until at least December 2017.

Also on 25 August 2017, DCFL wrote to Mr C confirming an appointment to meet on 31 August 2017. Attached to that letter DCFL sent Mr C a fact-finding document and asked him to complete this prior to its initial meeting. The completed fact find noted that Mr C was 32, in good health, employed full time and married with two children. He and his wife owned their own home with an outstanding mortgage that was due to be repaid in approximately 23 years. And their income covered their outgoings each month. Mr C also noted that his knowledge of financial terms was very limited, and he had little or no investment experience.

Mr C was a member of his employer's new defined contribution pension scheme – set up when the BSPS closed to further contributions during the ongoing consultation. And he and his employer were making combined contributions to this of 18% of his salary. That pension arrangement had only recently begun though and the BSPS benefits made up the majority of his retirement provisions at that time.

It was recorded that Mr C hoped to retire at age 57. But his income needs in retirement were unknown. And the fact find said the reasons he was considering a transfer were for flexibility, better growth prospects and alternative death benefits.

On 11 September 2017 there was a further announcement, confirming the agreed payment had been made into the BSPS by Mr C's employers and the separation of the BSPS from the company had been completed. This set out that members would have to make a choice between staying in the BSPS or moving to the BSPS2 and explained that personalised information and illustrations would be provided in October 2017 to assist with that choice and that members would have until December 2017 to make a decision.

A follow up meeting between DCFL and Mr C took place on 13 September 2017. I understand at that meeting a recommendation was given by DCFL that Mr C transfer his pension benefits to a SIPP. Documents were signed during that meeting 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.

A written summary of the advice given by DCFL was not produced until 20 September 2017 – after the application had been submitted. The suitability report said Mr C's income needs in retirement weren't known, because of how long it was until he'd retire. But at the same time, it said the DB scheme wouldn't provide a sufficient income for retirement and transferring allowed the opportunity for the fund to grow. And, as DCFL had assessed that Mr C had a 'moderate to aggressive' attitude to risk (or a 7 on a scale of 1-10), it felt he could afford to take the relevant risks involved.

DCFL also said Mr C wanted control of his pension because of the ongoing uncertainty and was concerned about the inflexible death benefits in general the DB scheme provided and losing flexibility if he moved to the PPF. In particular it noted the inflexibility of having to take a regular pension income from the point tax-free cash ('TFC') was drawn, as a feature Mr C wanted to avoid. It also said Mr C was concerned about the penalties he'd incur for taking benefits before age 65 under the DB scheme. And DCFL said a transfer addressed these issues. The report did say that 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 – was unlikely to be achieved. But didn't comment further on why it was suitable for Mr C to accept that.

The report also recommended that Mr C transfer his other small personal pension, which had a transfer value of £956.72, in order to streamline his pensions savings. Subsequent to the transfer, DCFL would also 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 the advice was unsuitable and he thought a transfer should not have been recommended because the SIPP was highly unlikely to match the guaranteed benefits that he could've received through the BSPS2.

DCFL didn't uphold Mr C's complaint. DCFL said the uncertainty around the BSPS was a major concern for Mr C and so he wanted to transfer. DCFL said these benefits were likely to only represent a small part of Mr C's retirement provisions and he was happy to accept a moderate to aggressive risk profile. So, by transferring he could achieve growth not just limited to inflation – which the DB scheme would've been. It also gave him the flexibility to retire early. And he would have more flexible death benefits, which DCFL said the DB scheme didn't provide. So, it said it thought the advice was suitable as a transfer allowed him to meet his objectives.

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 of the BSPS benefits and the small personal pension had led to as well as pay £350 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 any of the other reasons for transferring given by DCFL were strong enough to justify the transfer and Mr C accepting a reduction in his retirement benefits. So, he didn't think a transfer was in Mr C's best interests and if he had been correctly advised believed Mr C would've transferred his benefits to the BSPS2.

Mr C's representatives largely accepted the Investigator's findings although they noted that Mr C disputed that alternative death benefits or the ability to draw TFC was a motivator for the transfer or were even discussed in any detail. Mr C's representatives also said they didn't think making an overall 15% notional deduction from the compensation amount to account for income tax was fair as this didn't account for ongoing charges that Mr C may incur.

DCFL did not accept the Investigator's opinion. It said Mr C had been clear he intended to retire early and take TFC and said its recommendation was based on an assessment of Mr C's circumstances and objectives – which it felt the Investigator had not given enough regard to. So DCFL maintained that transferring was in Mr C's best interests. 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 the alternative death benefits were useful.

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 it was not responsible for any losses since it had stopped providing ongoing servicing.

The Investigator wasn't persuaded to change their opinion. They still didn't think that Mr C had any need to transfer and so felt that doing so wasn't in his best interests. He also didn't agree that recommending redress on the basis Mr C would've transferred into the BSPS2 was unfair, as this is what he believed would've happened, if Mr C had been advised against transferring. And he also thought it was fair to hold DCFL responsible for the entirety of any losses incurred. In response to the representative's argument, the Investigator still felt it was reasonable to require a notional deduction to account for income tax, as previously set out.

As agreement could not be reached, 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 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 investment 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 being 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 would be 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 exceeding the critical yield.

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

DCFL indicated in the suitability report that it felt the critical yields were unlikely to be achieved and says Mr C accepted this risk. But highlighting a risk does not mean that the advice that follows is suitable. And the suitability reported offered no additional commentary on this. There was no explanation what this meant for Mr C in terms of what income he would be able to sustainably draw from the new arrangement or how that compared to what he was giving up. Nor was there any detailed comparison for him to consider. And DCFL didn't explain why it considered accepting that the critical yields wouldn't likely be achieved – and the likely reduction in overall benefits this would bring – was in Mr C's interests. Rather it instead promoted the benefit of achieving 'growth' through transferring. So, while DCFL says Mr C accepted the risk of not achieving the critical yield, I don't think, based on what I've seen, that he was in a suitably informed position to understand what this meant.

I can see that critical yields were calculated in respect of the PPF, which I think was appropriate. But the other critical yield figures were based on matching Mr C's existing scheme, the BSPS, based on the revaluation assumptions noted. But Mr C didn't have the option to remain in the BSPS – he either needed to opt into the BSPS2 or move with the scheme to the PPF.

DCFL has also said that the BSPS2 was not certain to go ahead. But I think DCFL is overstating the chance of the BSPS2 not happening.

While the advice process was ongoing there were some significant updates being issued about what was happening with the BSPS and the BSPS2. This included confirmation that sponsorship of the BSPS2 was planned, that details of the scheme would follow and that members would have until December 2017 to make a choice. And indeed, before advice was given confirmation that the RAA had been implemented and separation of the BSPS from Mr C's employer completed, was confirmed.

DCFL was clearly aware of this, as the suitability report made reference to transfer values being due to improve – as a result of the lump sum payment into the BSPS by Mr C's employer as part of the RAA. But it's advice didn't really account further for these developments as there were no comparisons carried out with the benefits the BSPS2 would potentially provide.

DCFL's role was to look at and advise Mr C about what was in his best interests. Transferring out of a DB scheme is a one-off event. Once transferred there's no going back, the benefits of the DB scheme are usually lost forever. The announcements indicated the BSPS2 was likely to proceed, that details would follow and that Mr C would be given time to make a choice. Waiting for the further details would've allowed DCFL to carry out an analysis of the BSPS2 benefits, and properly compare these to the alternatives, and base its advice on this. Without doing this, DCFL was acting on information which it knew to be limited. So, it is difficult to argue that DCFL could properly assess whether a transfer was in Mr C's best interests or that it gave him enough information to make a fully informed decision. So, I think DCFL should have told Mr C to defer making a decision on the transfer until further details of the BSPS2 were known.

Nevertheless, I've thought about the analysis that was carried out. And I don't think this supports that a transfer was in Mr C's best interests.

The TVAS said the critical yield required to match the full escalating annual pension the BSPS was likely to provide from age 65 was 6.88%. And to match the full pension Mr C could take under the BSPS at age 57, the critical yield was said to be 8.04%. No figures were calculated for what would be required if Mr C elected to take TFC and a reduced pension under the BSPS at either age – even though DCFL says Mr C was interested in doing so. DCFL should have done this.

Critical yield figures were also calculated for the growth that would be required to match the benefits Mr C would be due under the PPF at ages 65 and 57. If Mr C took a full pension at age 65 under the PPF, the critical yield was said to be 5.42%. Or if taking TFC and a reduced pension, 5.19%. To match the full pension under the PPF at age 57 the critical yield was 6.74%. And for the reduced pension and taking TFC at that age, the critical yield was 6.49%.

Again, the critical yield applicable to the BSPS2 benefits wasn't calculated. The lower annual increases under the BSPS2 would've likely decreased the critical yields somewhat in comparison to the BSPS. But I still think they would've likely been equal to or higher than those reflecting the PPF benefits and are likely to have been closer to those of the BSPS benefits, particularly at age 65.

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.

The relevant discount rate at the time the advice was given was 4.7% per year for 32 full years to retirement, as would be the case had Mr C retired at age 65, given his age at the time of the advice was 32. For 24 years to retirement, the case if he retired at 57, the discount rate was 4.6%. 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 C's attitude to risk and also 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 I think Mr C was always likely to receive benefits of a substantially lower overall value than the DB scheme at retirement – whether at age 65 or 57, as a result of transferring. This would be the case even if the scheme moved to 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 financially 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 Mr C was only 32 when DCFL advised him to transfer – over 24 years from apparently when he intended to take any retirement benefits. I don't doubt he was interested in retiring early if possible – I think most consumers would be when asked. But I don't think his thoughts or plans were definitive at the time of the advice. Which I think is supported by the notes DCFL has provided from the meeting on 13 September 2017 which say Mr C would like to retire at age 57 but was open to working longer. And in any event, Mr C could take benefits early, potentially from age 57, under either the PPF or the BSPS2. 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 ‘penalties’ for accessing his benefits early under the PPF or the BSPS.

It is true that if Mr C drew his benefits at age 57, as DCFL has suggested he was interested in, 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 so it wasn’t providing clear and fair information. And, as I’ve already explained, I think Mr C was always likely to receive benefits of a lower overall value than those he’d have been guaranteed under the BSPS2 or the PPF at age 57 as a result of transferring.

DCFL indicated that transferring would mean Mr C did not incur these ‘penalties’. But while taking benefits flexibly under a personal pension would allow Mr C to decide the level of his income ‘without penalty’ the amount he could take was entirely dependent on the sum available under the pension plan. 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. And I think if it had been, and Mr C had been in a more informed position about the ‘penalties’ for early retirement, he might’ve been more willing to accept them.

DCFL also says Mr C wanted to be able to access the TFC without having to draw an income from the pension. Mr C though says this wasn’t discussed.

The fact find makes no record of a documented need for TFC. And while Mr C had a mortgage, the information indicates this was due to be repaid before he reached the age at which DCFL says he wanted to take benefits. No other reason was recorded as to why Mr C might need TFC. So, I don’t agree that at the time of the advice, Mr C had a genuine need to obtain flexibility for this purpose.

The suitability report also said that Mr C’s DB scheme wouldn’t provide him sufficient income in retirement. But at the same time his income needs were not recorded and DCFL said Mr C was unsure of what these would be. But with these needs entirely unknown, I don’t think it can be argued Mr C needed to transfer in order to achieve a specific level of income particularly given I think he was unlikely to be better off by transferring. And I also don’t think, given how long it was until Mr C was due to retire, that he could realistically rule out wanting at least some guaranteed income in retirement.

Based on what I’ve seen, I don’t think Mr C had a need for flexibility at the time of the advice. And 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 was concerned about the inflexible nature of the death benefits in his existing scheme. But Mr C again disputes that there was any real discussion about this.

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. At the time of the advice – the circumstances that the advice should've been based on - 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.

And while the CETV figure might have seemed attractive as a potential lump sum, 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, so there was nothing to suggest he was less likely to live until at least his average life expectancy. DCFL has said this was not guaranteed but with no recorded health issues I think expecting him to reach his average life expectancy was a reasonable assumption. So, given the implication was that Mr C would draw a pension 'without penalty' from age 57, it appears likely the fund would've been significantly depleted by the time it was passed on to any dependents.

The fact find also recorded that Mr C had death in service benefits, which, in my view, appear to have been a more appropriate method by which to leave a legacy to his estate. The new defined contribution pension he was a member of would've also provided alternative death benefits 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, I think life insurance should've been considered - which given his age and apparent good health appears likely to have been obtainable at a reasonable price. But I can't see that this was discussed.

Overall, I don't think the different death benefits available through a transfer to a SIPP justified the likely decrease of retirement benefits for Mr C. 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 C's desire for direct control over his pension benefits was overstated. Mr C was not an experienced investor and I cannot see that he 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. I don't doubt Mr C, like many of his colleagues, was concerned about his pension. His employer had been consulting on its plans for the scheme for some time. And the announcements in the weeks and months prior to the advice indicated he was going to need to make a choice about this – which I doubt is something he'd done or contemplated before. And he might've felt unequipped to do so. I also don't doubt Mr C had likely heard negative things about what could happen, including entry into the PPF. And it's quite possible that Mr C was leaning towards the decision to transfer because of his concerns. But 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.

As I've explained, I think DCFL should have waited before confirming its advice so that the option of the BSPS2 could've been fully considered and explained. Prior to the advice being given there were updates regarding the BSPS and the BSPS2 that indicated it was progressing and appeared likely to be an option for customers in Mr C's position. So, the advice should've properly taken the benefits available to Mr C through the BSPS2 into account. Which, as I've said, it appears he was unlikely to improve upon by transferring. And I think this 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.

But 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 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 across a specific portfolio. 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 potential concerns stemming from the ongoing uncertainty and unfinalized potential plans 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 first recommended that he defer making a decision until further details of the BSPS2 were available – which the announcements preceding the advice indicated was imminent and Mr C would be given time to consider. And ultimately, I don't think he should've been advised to transfer.

Mr C had over 24 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 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 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 opted into the BSPS2. And I don't agree with DCFL that it is unreasonable to base redress on this – given 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.

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.

I've thought about Mr C's representative's point regarding the 15% deduction from any redress payable, to take into account the tax Mr C would've paid had this been taken as income. It believes this is unfair as it doesn't account for the charges that would've been deducted from the fund value over that time. While I appreciate the representative feels this may unfairly reduce the redress payable, I'm mindful that it is not possible to provide exact compensation in these circumstances, as the only way to achieve this would be to put Mr C back into the scheme as if the transfer out hadn't happened – which isn't an option. So, overall, I remain of the view that the redress proposed fairly compensates Mr C for the impact of the unsuitable advice he received.

Our Investigator recommended that DCFL also pay Mr C £350 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.

The advice to transfer Mr C's small personal pension

In addition to recommending Mr C transfer his BSPS benefit, DCFL also recommended that Mr C transfer a separate small personal pension, with a transfer value of just over £950. The reason given in the suitability report for doing so was to "streamline" his pension savings.

Mr C's existing personal pension had an annual management charge of 0.95%.

The SIPP that DCFL recommended had an annual service charge of 0.25%. But there also appear to have potentially been management charges in respect of some of the specific investments. And DCFL charged an annual fee of 1% for providing ongoing management. So overall, the cost of the new arrangement appears to have been greater than Mr C's existing pension.

And the majority of the flexible features that the new arrangement would provide were already offered by Mr C's personal pension.

So, there seems to have been no particular reason or benefit to Mr C in transferring this pension, beyond consolidation of his different provisions. And as I've already found that the DB scheme transfer was unsuitable, it follows, in my opinion, that without that, the transfer of the personal pension would likely not have taken place. So, at the same time as addressing the unsuitable advice to transfer his DB scheme, I think DCFL should put Mr C, as far as possible, in the position he would've been in, had the transfer of the personal pension not taken place.

Putting things right

A fair and reasonable outcome would be for the DCFL to put Mr C, as far as possible, into the position he would now be in but for its unsuitable advice. I consider Mr C would have most likely remained invested in his personal pension, if suitable advice had been given. And in respect of the BSPS benefits, I consider Mr C would have most likely opted to join the BSPS2, rather than transfer to a SIPP if he'd been given suitable advice. So, DCFL should use the benefits offered by BSPS2 for comparison purposes in respect of that part of the redress.

To compensate Mr C fairly, DCFL must determine the ***combined fair value*** of his transferred pension benefits as outlined in Step One and Step Two below. If the ***actual value*** is greater than the ***combined fair value***, no compensation is payable.

fair value – step one

If Mr C had been given suitable advice, I think he would have retained his DB scheme benefits and joined the BSPS2.

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 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 calculate the value of the benefits Mr C lost as a result of transferring out of his DB scheme in line with the regulator’s pension review guidance as updated by the FCA 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.

The calculation should be carried out as at the date of my final decision, 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 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.

fair value – step two

DCFL must compare the value of Mr C’s personal pension transferred to his SIPP with that of the notional value from the previous provider shown below to determine the fair value of Mr C’s personal pension if suitable advice had been given.

Investment name	Status	Benchmark	From (“start date”)	To (“end date”)	Additional interest
Value of the personal pension fund transferred	Still exists and liquid	Notional value from previous provider	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 90 days of the business receiving the complainant's acceptance)

Notional Value

This is the value of Mr C's investment had it remained with the previous provider until the end date. DCFL should request that the previous provider calculate this value.

If the previous provider is unable to calculate a notional value, DCFL will need to determine a fair value for Mr C's investment instead, using this benchmark: FTSE UK Private Investors Income Total Return Index. The adjustments above also apply to the calculation of a fair value using the benchmark, which is then used instead of the notional value in the calculation of compensation.

Any additional sums paid into the SIPP should be added to the fair value calculation from the point in time when they were actually paid in. Any withdrawal, income or other payment out of the SIPP should be deducted from the fair value at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there are a large number of regular payments, to keep calculations simpler, I will accept if DCFL totals all those payments and deducts that figure at the end instead of deducting periodically.

Why is this remedy suitable?

I've decided on this method of compensation because:

- Mr C wanted Capital growth and was willing to accept some investment risk.

- If the previous provider is unable to calculate a notional value, then I consider the measure below is appropriate.

- The FTSE UK Private Investors Income *Total Return* index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.

- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr C's circumstances and risk attitude.

The combined value of the sums produced by the above two steps is the ***combined fair value***.

actual value

This means the actual amount payable from the SIPP at the date of the calculation.

A copy of the redress calculation should be shared with Mr C and his representatives. If the redress calculation demonstrates a loss – the ***combined fair value*** is greater than the ***actual value*** – 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.

In addition, DCFL should pay Mr C £350 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 7 March 2023.

Ben Stoker
Ombudsman