DRN-3701958

The complaint

Mr S complains about advice he was given to transfer the benefits of a defined-benefit (DB) occupational pension scheme (OPS) to a personal pension plan. He says the advice was unsuitable for him and believes this has caused him a financial loss.

D2 Financial Solutions (UK) Ltd is responsible for answering this complaint. To keep things simple I'll refer to it as "D2".

What happened

Mr S approached D2 to discuss his pension and retirement needs in 2017. The information D2 gathered about Mr S was broadly as follows:

- Mr S was 54 years old and working. His current salary was £28,500 per year. Mr S was married, and Mrs S, who was a similar age, was receiving incapacity benefits of around £8,000 per year. They lived in local authority rented housing.

- Mr and Mrs S had no dependent children. Other than some shares earned through Mr S's employer's share-scheme, they had no other assets or savings.

- Mr S was a deferred member of an OPS, having been employed between the mid-1980s and 2005. The cash equivalent transfer value (CETV) of Mr S's OPS was approximately £373,000 with a normal retirement age of 65.

- In the light of the recent 'pension freedom' rules, Mr S had expressed an interest in accessing his OPS at the age of around 55 to buy a house although he expected to carry on working for several more years.

In May 2017, D2 advised Mr S to transfer out of his OPS and use the funds to buy a house. It said the remainder should be invested with a well-known company in funds it recommended.

Mr S now says he was given unsuitable advice by D2. D2 disagreed and the complaint was referred to our Service. One of our investigators looked into the complaint and said although D2 had got a number of things wrong, they thought Mr S would have still transferred out of his pension anyway. The investigator recommended we shouldn't uphold the complaint but Mr S didn't agree with our investigator.

I issued a provisional decision (PD) on this case in August 2022 inviting either party to provide any new information or arguments they wanted me to consider. D2 sent me a response which I've considered. Mr S didn't submit anything else and said he agreed with what I'd said in the PD.

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.

Having done so, I am upholding Mr S's complaint.

The regulator, the Financial Conduct Authority ('FCA'), states in its Conduct of Business Sourcebook ('COBS') that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, D2 should have only considered a transfer if it could clearly demonstrate that the transfer was in the consumer's best interests (COBS 19.1.6).

Having looked at all the evidence available, including D2's response to my PD, I'm not satisfied it was in Mr S's best interests.

Financial viability

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.

I'll start out by addressing what D2 said about Mr S's attitude to risk (ATR). I note from the suitability report D2 produced that Mr S was placed in the ATR category of lowest-medium (or a risk of 4/10). It seems to me this was based on a 'tick box' risk profiler form he'd filled out. Whilst I've no doubt Mr S ticked the relevant boxes and signed the form, I think some of the answers he gave to certain questions conflicted with others and ought to have raised further enquiry. On the 'fact-find' it was said that Mr S wanted low risk and wanted low volatility. So, I've thought about the likelihood of this ATR category of 4/10 being accurate.

Mr S did own some shares, but these were related to his job share-scheme and so I don't think he'd have had much direct involvement in selecting or managing these. Other than this, I can see, for example, that he had no experience at all of investing and he said he was uncomfortable with the concept. He also expressed concerns about potential investment losses and he indicated he'd rather have a guaranteed income if able to choose.

Printed elsewhere on the risk profiler form, it was recommended that before deciding on the ATR attributed it would be appropriate to consider the term Mr S was investing over, the importance of his investment and whether he'd be able to afford sustained losses. Overall I don't think D2 did this and instead focussed only on what answers he'd ticked to various questions on the profiler form. Looking carefully at his situation, I think his ATR was lower. I think that given the different answers he'd given, D2 should have discussed his ATR further with Mr S before arriving at a decision about what his ATR actually was.

It's also difficult to see how Mr S had any capacity for loss: he had no other savings and he'd not signed up to his current employer's pension scheme, as of 2017. Mr S had no other assets and lived in a council property and there was no apparent prospect of Mrs S being able to work.

So, I think that collectively these things should have put D2 on notice that it ought to have categorised Mr S at very low levels in both these areas. These things are important, as they help put into context the types of investments that might be suitable for someone like Mr S and the level of growth he could reasonably target in a personal pension if the transferring out of his OPS went ahead. And as Mr S should have been categorised at a much lower level, the ability to really grow his funds would have been constrained.

D2 said the critical yield, or growth rate, required to match Mr S's benefits at age 65 was 6.44% if he took a full pension. The relevant discount rate was 3.8% per year for 10 years to retirement. For further comparison, I've noted the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2% per year.

I've taken all this into account, Mr S's *realistic* attitude to risk and also his term to retirement. There would be little point in Mr S giving up the guarantees available to him through his existing DB scheme only to achieve, at best, the same level of benefits outside the scheme. However, in this case, given the figures I've demonstrated above, I think Mr S's pension was unlikely to grow outside his OPS in a way that would make transferring it out worthwhile. In my view, he was likely to receive benefits of a significantly lower overall value than the DB scheme upon retirement by transferring.

I also noted that D2's own transfer analysis report tends to support this. It said that in order to purchase an annuity of an equal value to the benefits of his existing scheme at retirement, the estimated fund required would be approximately £617,000. So I think this helps establish the true value of the benefits Mr S would be giving up by transferring away.

D2 also provided some examples of how it thought Mr S could meet his retirement income needs if he transferred out. However, these were not direct like-for-like comparisons with the scheme he'd be leaving and I think Mr S would have found the data hard to understand.

In D2's final response letter, for example, it refers to the suitability report describing *"illustrations of potential income you could take from the pension fund, after having transferred"*. But the illustrations D2 used assumed a constant income, rather than an increasing one. They also assume a commencement at the age of 67, rather than 65 and with various projected growth rates factored in. D2 also recommended certain funds that it said could produce somewhere around 8% growth in a personal pension plan. But like the other examples provided by D2, these were not guaranteed in the same way his OPS was. Nor did they match the benefits Mr S would be giving up, including the spouse benefits, which I'll explain more about later.

D2 should also have known that past performance is no guarantee for future performance. So, I don't think the information Mr S was given here was clear, fair and not misleading. I also consider the discount rates and the regulator's standard lower projections to be much more realistic, rather than projecting historic returns forward, particularly over such a long period of time. These more realistic rates showed a likelihood of Mr S's funds growing outside his DB scheme at a much lower rate than assumed by D2 – and also much lower than the critical yield described above.

In arriving at a view on the financial viability of transferring out, I've considered D2's responses to my PD in relation to Mr S's ATR and the potential for growth if Mr S went ahead and transferred his pension out of the scheme. However, D2's comments don't change what I think.

In my view, there's very clear evidence that a transfer out of the DB scheme wasn't in Mr S'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 these below.

Issues raised as the reasons to transfer

I've used all the documentation available about this transfer to think about Mr S's circumstances at around the time the advice was given.

The 'fact-find' and suitability report both say that Mr S's aspiration was to more or less immediately access some of his pension savings at the age of 55, which was only a few months away. The information gathered is fairly clear that his major objective was to move from his current council-owned property, to buy a home of around £200,000 for him and Mrs S. This was to be achieved by him accessing around £93,000 of his transferred pension as a 25% tax-free cash element, and to take another £30,000 as a taxed lump-sum. These amounts would be paid as a deposit for a house and the remaining amount would be obtained via a mortgage. Accordingly, D2's recommendation was to *"transfer your existing pension …. to a new Personal Pension"* so Mr S could allow these cash amounts to be freed up at the age of 55.

Although not specifically listed in the suitability report, mention was made on the 'fact-find' of Mr S also wanting to use some of the money he'd get access to by transferring his pension to pay off some debts. It's not entirely clear what the details of these debts were. However, Mr S himself had referred to potential issues in getting a mortgage due in part to his poor credit history. And D2 also says in its final response letter that Mr S had debts of £12,700; it also refers to previous, although unspecified, problems he had with unsecured lending.

However, as I'll explain below, I think the issue of outstanding debts was much less prominent, in the consideration about what Mr S wanted money for at the time, than his desire to buy a house. In support of that view, I note the debts were not comprehensively explained in either the 'fact-find' or suitability report and they seem only to comprise of a car loan and some moderate credit card balances. After my PD, D2 confirmed this to be accurate.

I think it's therefore fair to say the money from accessing Mr S's pension at 55 was mainly related to him wanting to buy a house. The supporting reasons outlined in the suitability report for D2's transfer recommendation were broadly as follows:

- The existing scheme's early retirement options did not meet Mr S's needs.

- Access to 25% tax-free cash (more than in his existing scheme).

- Full control over when to access benefits, more flexible access to benefits, allowing you to decide how and when you draw.

- Increased lump sum death benefits for wider family.

I’ve considered all these reasons to help me think about whether the recommendation to transfer out was justified.

Some consideration appears to have been given to Mr S remaining in his existing scheme, where he could still have accessed some tax-free cash at some point after the age of 55. However, this was discarded mainly on the basis of the tax-free cash element being too low for what Mr S wanted the money for. He also didn’t yet need an additional income in the form of a pension. At the ages of 55 or 59 for instance, tax-free lumps sums of around £38,000 and £49,000 respectively could have been accessed from his existing scheme, with pensions for life of £5,700 and £7,500 per year in each case.

I agree these options would not have been suitable for Mr S. The information provided tends to show these lump sums would not have met his requirements for buying a house because he implied he wouldn’t have been able to get a mortgage covering the balance. And the resulting pensions, in my view, were not yet required due to Mr S still working. Accessing his OPS early like this would have therefore compromised its value in that his pension, when he eventually retired, was too low for his retirement needs because he’d accessed it early.

Next, I considered whether accessing a full 25% tax-free cash amount, by transferring his OPS to a personal pension, contributed to making the overall transfer recommendation suitable. It’s often the case with personal pensions that a greater access to tax-free cash is achievable; more than would be available via a DB scheme. This is because the overall benefits and values are calculated in different ways.

However, D2 should have been explaining to Mr S that this extra cash came with a cost. Accessing more cash would leave less money remaining in the funds available for a pension, and in Mr S’s circumstances, I think this would have meant an uncertain retirement. This was Mr S’s only pension and giving up cash ‘now’ meant having less income later. I don’t think D2’s recommendation adequately accounted for this.

I then considered the issues of control, access and flexibility, as outlined in the suitability report recommendation section.

Essentially, I think these issues were poorly defined by D2 and no more than generic objectives common in many pension transfer situations. I don’t think, for example, that Mr S had either the capacity or desire to actively manage his pension affairs. He was already in a pension scheme, one run by trustees and which required little or no effort from Mr S.

I also don’t think Mr S required the flexibility as put forward by D2. He didn’t need a flexible income, in fact, I think the opposite was true in his situation and this was likely to be the case in the years ahead. As for the immediate future, at the age of 54, Mr S was still employed. His stated intention at that point appeared to be to continue working for quite a few more years. Whilst Mr S did not have a high salary, the evidence collected and used by D2 shows he and Mrs S were able to live on his income and her incapacity benefits combined – after expenses it noted they had disposable income of around £700 per month.

Death benefits

This issue was also cited by D2 as a reason for Mr S to transfer from his OPS. 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 was likely an attractive feature to Mr S. But whilst I appreciate death benefits are important to consumers, and Mr S 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 S about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. Mr S certainly needed an income in retirement. And I don't think D2 explored to what extent Mr S was prepared to accept a lower retirement income in exchange for higher death benefits.

I also think the existing death benefits attached to the DB scheme were substantially underplayed. This pension contained very good death benefits in my opinion: Mr S was married and so the spouse's pension provided by the DB scheme would have been useful if Mr S predeceased Mrs S. In certain circumstances, a widow's pension of 60% was available and I don't think D2 made the value of this benefit clear enough during the advice. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. Given Mrs S's circumstances, I think this was a benefit Mr S would have been loath to give up had it being explained to him in the right way.

Also, in this particular case, whether the death benefits here were improved following a transfer depended on how much remained in the pension fund at the point of Mr S's passing. Given average life expectancy, and the size of this fund, I think it was always a possibility that this fund would be entirely depleted prior to Mr S's death, thus providing no death benefits at all. I don't think that D2 made this clear. And I don't think D2 should have told Mr S that the death benefits were better by transferring – they weren't.

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 S.

Suitability of the advice

This brings us to the crux of the matter – the main reasons apparently behind the transfer-out recommendation.

I've thought about the unsecured lending D2 mentioned, particularly the comments made in its complaint final response. However, no evidence was recorded at the time of the advice, that any borrowing Mr S had wasn't being duly addressed. Nor is there any evidence showing Mr S's debts compromised his overall financial well-being at that time. In my view, these issues have been mostly mentioned by D2 after Mr S made the complaint.

So, although some reference was made to Mr S wanting to 'reduce his debts', I've seen nothing showing this was an actual objective at the point of the advice. There's also no evidence he was behind with his repayments or that he was in financial distress. But even if this were the case, I'd have expected a much more comprehensive commentary from D2 in its advice in 2017. This might have included an itemised list of his borrowing and the options to reduce this in a way which didn't involve compromising his retirement.

This therefore leaves only what seems to have been Mr S's major aspiration at the time, which was to buy a house. I certainly don't doubt this is something Mr S may have wanted to do. I accept he may even have been thinking about it for a long time. However, D2's role here wasn't to simply transact what Mr S thought he wanted; its responsibility was to really understand his needs and recommend what was in his best interests. And in paying for financial advice, I think Mr S would be expecting to be guided on what was best for him.

Looking at his overall situation, I think D2 ought to have thought very carefully about Mr S's future needs before any recommendation was made. It should also have been considering the starting position of the regulator which is that transfers from DB pensions probably aren't suitable. As I've said, Mr S had failed to sign up for his current employer's pension scheme despite having been in his job many years. And even if he did in the future, this was a much less generous ‘defined contribution’ scheme. Given his age, I think Mr S was highly unlikely to achieve a viable pension from this alone.

I think it’s also fair to note that *Mrs S’s* situation added to the need for caution and ought to have been factored into the advice D2 gave. She had no income (other than incapacity benefit) and no pension of her own.

So, even with Mr S’s existing pension, I think they faced a challenging retirement. At the normal retirement age of 65 Mr S’s OPS was projected to pay around £15,000 per year and I think this would have barely met their needs in its own right. D2 doesn’t appear to have analysed how much income Mr S would have needed in retirement although I note it now says this was because he was still some way off giving up work. It was implied in the ‘fact-find’ that Mr S was spending money on debt but there was very little detail about this and whether it would have been cleared by retirement. A proper analysis would have determined what level of income was needed in retirement and determined how much of a shortfall there could be, including between the ages of 65 and 67, for example.

I therefore don’t think it was a suitable recommendation for Mr S to give up his guaranteed benefits at that point when he didn’t fully know what his and Mrs S’s needs in retirement might be. If he later concluded that he had the need and the means to transfer out of his DB scheme he could have done so closer to retirement.

So, whilst accepting that Mr S wanted to buy a house, all these other issues needed to be considered very carefully – and I don’t think the eventual transfer recommendation did this. There was an opportunity here for D2 to tell Mr S that he simply couldn’t afford to do what he wanted to do, or certainly not yet.

Mr and Mrs S lived in a council property and I note they wanted to move to a better home, but equally, I’ve seen nothing that shows their housing situation was so critical as to outweigh all these other important considerations. And even if their housing situation was critical, I would have expected this highly relevant information to have been recorded on the suitability report in support of the recommendation. It appears to me they had sufficient income to meet the rental payments with disposable income of £700 per month. On the other hand, there was no assessment of what a new mortgage would cost, if Mr S was allowed to borrow. In this context, I’m not satisfied the advice to transfer was in Mr S’s best interests.

I think Mr S’s overall situation demanded that he should use his OPS in the way it was originally intended. This was for him to remain in his OPS and to access the benefits at retirement.

Other issues

I’ve noted D2 sent us a copy of an agreement form Mr S signed. D2 implies this shows Mr S was made aware of the risk of transferring and the benefits he’d be giving up. I’ve considered this but this doesn’t change the recommendation D2 provided to Mr S, which was to transfer out. So, if D2 wanted to make it clear that the risks outweighed the benefits, it’s advice should have reflected this by recommending that he shouldn’t transfer. Of course, if Mr S had still insisted, then the parties could have gone on to discuss the risks in greater detail and D2 could have really set out its case.

In any event, this appears to have been a pre-prepared document produced by D2, rather than Mr S himself. So to me, the same issues are therefore apparent – if the risks were so high, then these should have been apparent in D2’s overall recommendation. Mr S could have then been asked to explain in his own words, had he disagreed.

Would Mr S have still transferred out of his scheme?

Our investigator's view was that D2 had made a number of failings broadly along the lines as I've explained in my decision. However, they also thought Mr S would still have transferred out, even if the advice had said he should keep his pension in the OPS.

I considered this issue with great care and also reconsidered it in the light of D2's response to my PD.

However, I don't think Mr S would still have gone ahead with the transfer, even if he'd been advised by D2 not to. In my view, the evidence simply isn't strong enough for me to say this and Mr S has told us he'd have considered staying where he was. As I've said, there was no immediate or pressing need to move home that was made apparent in any of the documents used at the time and, as I've also said, D2 wasn't there to simply transact what Mr S thought he wanted. So, I'm not persuaded that Mr S would have insisted on transferring out of the DB scheme, against D2's advice, had that advice been objective and incorporated all the risks I've highlighted above.

These risks included this pension accounting for the vast majority of his and Mrs S's retirement provision. In this context, D2 needed to explain – that at the very least – it's recommendation would involve removing at least a significant part of Mr S's available pension, a pension that was already modest. It should have been pointing out the challenges this presented in his retirement.

There was also a specific risk around loss of the guarantees and benefits, particularly for Mrs S, if Mr S predeceased her.

Mr S was also willing to pay for regulated financial advice, so I think if D2 had provided him with clear and objective advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think it's more likely he would have accepted that advice.

Suitability of investments

D2 recommended that Mr S invest his funds in a personal pension. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr S, it follows that I don't need to consider the suitability of the investment recommendation. This is because he should have been advised to remain in the DB scheme and so the investment in the new funds wouldn't have arisen if suitable advice had been given. We now know Mr S withdrew all the funds in subsequent years.

Response to my PD

As mentioned earlier in this decision, D2 replied to my PD making a number of points. I'm grateful for the time taken for D2 to set out its position again. I've read everything that it has said, but in general terms, almost all of D2's points are a re-emphasis of what it has already provided.

I've nevertheless thought very carefully again about all the arguments in the light of D2's submission. It asked me to specifically refer again to the statement from 'RH' (a financial adviser) providing additional commentary of his discussions with Mr S at around the time of the advice. I did this before issuing my PD and have done so again but I'm afraid it doesn't change my view.

The major point here remains that Mr S's rationale for transferring from his OPS was said to be his desire to by a property. However, I comprehensively dealt with this issue in my PD. In the light of D2's reply, I still consider the reasons I gave, as to why this on its own didn't make the advice suitable, to be valid. Mr S may well have had a desire to buy a property, but as I explained, D2's job wasn't to simply transact what Mr S thought he wanted at any cost.

Similarly with other issues mentioned by D2 following my PD: these included the financial disbenefits I mentioned of transferring out from his DB scheme; Mr S's apparent desire for flexibility and control of his pension; and his ATR. These were all matters which D2 felt the need to 're-emphasise' its original views on in replying to my PD.

But in all these areas, D2 had nothing new to add. I remain of the view, for the same reasons I have previously set out, that there's very clear evidence Mr S's pension benefits would have been lower by transferring out of his OPS. Nor do I think he had a need or desire to manage or control his own pension affairs. And what D2 has added about his ATR only adds weight, in my view, to him being categorised too highly.

I do agree with D2, however, that the overall redress calculation must be consistent with any benefits or gains Mr S enjoyed by accessing the funds in the way he did. Financial Conduct Authority Guidance 17/9 (see below) accounts for any withdrawals made when undertaking these types of calculations.

Summary

In this decision I have explained the situation Mr S was in. He wanted to move from a council house and buy a home for himself and Mrs S to live in. With no deposit, a moderate income and a poor credit history, I've no doubt he saw the new 'pension freedom' rules as a possible way to achieve this as he approached the age of 55.

However, I began by explaining how I think D2 mis-judged Mr S's ATR. I then demonstrated how his existing pension funds, outside of his DB scheme, were highly unlikely to grow to an extent where transferring out was financially viable. As such, Mr S would most likely receive benefits of a substantially lower value. This alone made the transfer unsuitable from a financial viability perspective.

Next, I explained that this was Mr S's only pension (other than a state pension). He and Mrs S had neither savings nor assets available for their retirement and Mrs S was in receipt of incapacity benefit and unable to work. In my view, they were in a somewhat vulnerable situation which Mr S's OPS could have helped to mitigate in the years ahead by providing a retirement income for the rest of his life.

I also set out the shortcomings in D2's advice: failures to objectively point out the risks; failures to provide clear warnings about future income needs; and no coherent assessment of Mr S's current and future debt requirements.

So, as compelling as Mr S's aspirations about buying a house were, accessing his only pension early, by transferring out of his DB scheme, was not in his best interests. Mr S was giving up a guaranteed and index-linked income and very good spouse benefits. In his situation, these were all important considerations.

In addition to these considerations, there was simply no evidence showing either moving home at that point or paying down unspecified debts were so critical to Mr S's situation as to make transferring out the right thing to do. It left Mr and Mrs S with a substantial gap in their retirement needs going forward and D2 seems to have taken little or no account of this in making its recommendation.

My final decision is therefore that I don’t think the advice given to Mr S was suitable. He shouldn’t have been advised to transfer out - D2 should have advised Mr S to remain in his DB scheme.

Putting things right

A fair and reasonable outcome is for the business to put Mr S, as far as possible, into the position he would now be in but for D2’s unsuitable advice. I consider Mr S would have most likely remained in his DB scheme if suitable advice had been given.

D2 should 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 S 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 S’s acceptance of the decision.

D2 may wish to contact the Department for Work and Pensions (DWP) to obtain Mr S’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 S’s SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr S’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 S 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 S within 90 days of the date D2 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 D2 to pay Mr S.

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.

I am aware that on 2 August 2022, the FCA launched a consultation on changes to this 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 methodology in FG17/9 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.

Nevertheless, the basic objective of the proposed amendments still remains to put a consumer, as far as possible, into the position they would be in if the business had advised them to remain in the DB scheme.

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 during the consultation. 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.

I think it's fair for me to give Mr S the same choice.

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 S. And, having reviewed the FCA's consultation and its proposed updates to the methodology, I'm satisfied that the proposed changes under consultation would, if ultimately implemented, still reflect a fair way to compensate Mr S in this case.

Therefore, if Mr S wishes to have his redress calculated in line with any new or updated guidance and rules, I direct D2 to undertake a redress calculation in line with the updated methodology as soon as any new rules and/or guidance come into effect (rather than to calculate and pay any due compensation now in line with FG17/9). As I have set out above, it is not certain when any updated rules and guidance will come into effect, but the FCA has said that it expects this will be in early 2023.

As noted above, the FCA has stated that the aim of any updated guidance and rules would remain the same as in FG17/9, which is to put consumers in the position they would be in if they had remained in their DB scheme (recognising actual reinstatement into the former scheme might not be possible).

This Service can't advise Mr S on whether or not he should wait. The FCA has published some information and answers to likely questions consumers might have about how redress is calculated. I recommend Mr S reads this information before he makes his choice.

This can be found here: https://www.fca.org.uk/consumers/pension-transfer-defined-benefit/redress-calculations

Mr S should let me know in response to this view whether he wishes for D2 to calculate any compensation that may be owed to him:

a) in line with the guidance in FG17/9 (as recommended above)

   or

b) in line with any new rules or guidance that are expected to come into force in early

2023.

If I don't receive a response on this point, I'll assume Mr S doesn't wish to wait and I'll continue to recommend compensation to be calculated in line with FG17/9.

If the complaint hasn't been settled in full and final settlement by the time the outcome of the consultation is published, I'd expect D2 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.

My final decision

Determination and money award: I uphold this complaint and require D2 Financial Solutions (UK) Ltd to pay Mr S 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 D2 Financial Solutions (UK) Ltd to pay Mr S any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I would only require D2 Financial Solutions (UK) Ltd to pay Mr S any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that D2 Financial Solutions (UK) Ltd pays Mr S the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr S.

If Mr S accepts this decision, the money award becomes binding on D2 Financial Solutions (UK) Ltd.

My recommendation would not be binding if he doesn't agree. Further, it's unlikely that Mr S can accept my decision and go to court to ask for the balance. Mr S 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 S to accept or reject my decision before 1 November 2022.

Michael Campbell
Ombudsman