DRN-3835163

The complaint

Mr F complains about the advice given by D C Financial Limited to transfer the benefits from his defined-benefit ('DB') occupational pension scheme with British Steel ('BSPS') 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 F'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.

Mr F was concerned about what the announcement by his employer meant for the security of his DB scheme, so he sought advice. In August 2017 Mr F met with D C Financial and it completed a financial planning questionnaire with him to gather information about his circumstances and objectives. In summary this recorded that Mr F was 43 years old; he was working full-time; he was single but due to marry in 2018; he owned his own home with an outstanding mortgage of around £95,000 with a remaining term of 21 years; he had an investment property, which also had a mortgage of around £66,000 remaining and this provided him with a monthly income of around £450 a month; and he had cash savings of around £1,500. D C Financial also carried out an assessment of Mr F's attitude to risk, which it deemed to be 'cautious to moderate.'

On 29 August 2017 D C Financial issued its formal written advice and it recommended Mr F transfer his BSPS benefits into a personal pension arrangement and invest the proceeds in investment funds, which D C Financial deemed matched Mr F's attitude to risk. In summary the reasons for the recommendation were to provide flexible income; to provide the ability for Mr F to retire early and suffer no reductions; to provide better death benefits; and a transfer would avoid the fund entering the PPF.

In October 2017, members of the BSPS were sent a "Time to Choose" letter which gave them the options to either stay in BSPS and move with it to the PPF, move to 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).

Mr F's pension transfer completed in December 2017 and around £253,000 was received into the new personal pension.
Mr F complained to D C Financial in 2021 about the suitability of the transfer advice – Mr F believed he'd lost out as a result of the advice he received.

D C Financial didn't uphold Mr F's complaint. In summary it said the advice was suitable and in Mr F's best interests having regard for his stated needs and objectives. It said it provided Mr F with clear advice setting out the risks and benefits of transferring to ensure that Mr F was both aware of and comfortable with the risk of transferring away from the guaranteed benefits his DB scheme provided.

Dissatisfied with its response, Mr F asked this service to consider his complaint.

In submitting its business file to us, D C Financial provided a substantive accompanying note, which I have read in full. But in summary it said it said the BSPS2 did not exist at the time, so it couldn't have recommended Mr F transfer to it. It said it doesn't think the critical yield and whether this was achievable should be a substantive consideration when looking at suitability. If the critical yield was considered, it said the only relevant comparison would be to the PPF. But it didn't think critical yields were relevant as Mr F didn't intend to purchase an annuity, so the comparison is flawed. It said the past performance and what had happened since the advice, which shouldn't be disregarded, showed that the level of growth was achievable. It said the growth had exceeded the critical yield against the PPF at age 65. But it said in any event, even if the growth achieved through transferring meant the benefits of the new pension were the same as, or even slightly less than the DB scheme, the advice would still have been suitable as it provided Mr F with flexibility. Overall it said it still felt that the recommendation to transfer was suitable as it allowed Mr F to achieve his goals and avoid moving to the PPF. It also argued that it was not responsible for any losses caused by 'bad investment advice'. Finally it said if the ombudsman concludes that the advice wasn't suitable, it wants a provisional decision issued with an opportunity to consider and respond to before a final decision is reached.

An investigator considered the complaint and upheld it and said D C Financial should pay Mr F compensation. In summary they said they didn't think the advice was suitable. They said, given the growth rate required to match Mr F's scheme benefits, the opportunity to match them let alone exceed them was unlikely. They also didn't think there were other compelling reasons for the transfer – for example they said there was nothing to show Mr F needed flexibility given he had no firm plans or objectives for retirement and his income need wasn't known. But they noted that Mr F's workplace scheme would have provided him with some flexibility if that's what he ultimately needed. They said better or different death benefits shouldn't have been prioritised over providing Mr F with an income in retirement – a protection could've provided death benefits at a lower cost than transferring. And Mr F's concerns about the scheme could have been allayed if D C Financial had waited for the BSPS2 details and used this in formulating its advice. They said if suitable advice had been given Mr F would've remained in the occupational scheme and given his age and length to retirement he would've opted into the BSPS2.

D C Financial disagreed. In summary, it said it didn't accept the advice was negligent. It also commented on a few key points from the investigator's assessment: it repeated its argument that the BSPS2 was not certain to go ahead at the time and that the PPF was the more likely option; it said Mr F only had until mid-October 2017 to accept his CETV quote; it disagrees the cost of transferring benefits was higher than the cost of a protection policy, which given Mr F's circumstances and because the sum assured would have to be at least equivalent to the transfer value, would have been very expensive; and it doesn't accept that Mr F's capacity for loss was weak given the equity he had in his properties.

Mr F's representatives largely accepted the investigator's findings. But they 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 charges Mr F has incurred through the personal pension.

The investigator wasn't persuaded to change their opinion, so the complaint was passed to me for a final decision.

What I've decided – and why

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

I've 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 D C Financial'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 broadly the same reasons as the investigator. My reasons are set out below.

I'd firstly like to briefly address the point D C Financial made about the fact the regulator, the Financial Conduct Authority ('FCA'), previously undertook a review of its advice process in relation to members of the BSPS and they didn't highlight any concerns. It said, whilst the advice was tailored for each matter, it applied a consistent approach to determining suitability and recording its advice. So it has questioned how our service can come to a different conclusion that the transfer advice was unsuitable.

My role and that of our service is different to that of the FCA. My role is to look at the individual circumstances of a complaint - not a business' processes and practices as a whole - and decide what I consider is fair and reasonable in all the circumstances of the complaint taking into account the considerations I listed above. And that is what I've done here.

I can also see that D C Financial has requested that I issue a provisional decision on this case before I make a final decision.
But I don't think I need to do so. Having considered everything provided by both sides, I'm upholding the complaint for largely the same reasons given by the investigator. I'm not persuaded that any of the arguments raised by D C Financial in its submission after the investigator's assessment are new. And I'm satisfied that the investigator addressed these

themes fully in their opinion letters. I'm also not making my decision based on any new information provided by Mr F. So, it follows that I can issue a final decision.

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

Financial viability

D C Financial carried out a transfer value analysis report (as required by the regulator) showing how much Mr F's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield). And this was based on his existing scheme benefits. But on 11 August 2017 during the advice process and before D C Financial issued its formal written advice to Mr F, the BSPS trustees announced that it had formally agreed terms for separating the pension scheme, and that if the Regulated Apportionment Arrangement ('RAA') was approved – expected on 11 September 2017 - scheme members would have a choice - either move into the new BSPS2 or remain in the existing scheme and move with it to the PPF.

This means that at the time of the advice, basing the analysis on the existing scheme was somewhat redundant - the existing scheme was no longer an option. So analysis of that scheme wasn't helpful to Mr F. I think it's reasonable to say that, in light of the announcement, D C Financial should've waited for the details of the new scheme and based the analysis and its advice on the BSPS2 instead so Mr F had all the relevant information to make an informed decision.

I can see that D C Financial has argued that BSPS2 was very far from being a certainty at the time of the advice, so the only comparison it could provide was the benefits available to Mr F through the PPF. And I accept the BSPS2 wasn't guaranteed to go ahead. But I think the available information from the scheme trustees indicated it would go ahead.

I can also see that D C Financial has argued that time was limited – Mr F only had until mid-October to accept his CETV. But as part of the announcement I referred to above, it said members who were already in receipt of an unexpired transfer value quotation would automatically be provided with an updated quotation taking into account any decrease in the underfunding reduction. It said these would be available by October 2017, have a guarantee period until 4 December 2017 and would supersede any existing quotations. And I can see D C Financial's suitability letter referred to this. While D C Financial has also argued the transfer quote might have been lower, which I accept was possible, the injection of capital into the BSPS through the RAA was going to have a positive impact on its funding position, so the likelihood was the values would be higher to take account of this. And this was something the scheme trustee information available at the time indicated was likely.

So I still think it was reasonable for D C Financial to delay its advice until the BSPS2 details were available, so it could take the benefits available to Mr F through the BSPS2 into account in formulating its advice, so that he was able to make a properly informed decision.

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.

Mr F was 43 at the time of the advice and the paperwork records that his preferred retirement age was 55 – although reference was also made to 57, which I think was because of legislation changes due to increase the minimum retirement age to 57.The TVAS dated 10 August 2017 set out the relevant critical yields in relation to Mr F's BSPS scheme benefits; at age 65 it was 6.25% if Mr F took a full pension and at age 55 it was 8.83%. The critical yields required to match the benefits provided through the PPF at age 65 were 4.41% assuming Mr F took a full pension and 4.06% if he took tax free cash and a reduced pension. The TVAS didn't provide the critical yields at age 55.

But as I said above, Mr F remaining in the existing BSPS scheme wasn't an option at the time of the advice. So, the advice should've been delayed to take account of the critical yields applicable to the BSPS2 benefits. The lower annual increases under the BSPS2 would've likely decreased the critical yields somewhat, so I think they would've been somewhere between those of the BSPS and the PPF - but closer to the BSPS.

This compares with the discount rate of 3.9% per year for 11 years to retirement (to age 55) and 4.5% per year for 21 years to retirement (to age 65) 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 F's recorded 'cautious to moderate' attitude to risk and also the term to retirement. In my view, and contrary to D C Financial's view, there would be little point in Mr F 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, the critical yield assuming Mr F took a full pension at 55 (the retirement age the advice appears to have predicated on) was 8.83% through the existing scheme. Unfortunately D C Financial didn't produce a figure based on Mr F taking a full pension at 55 through the PPF. But if Mr F were to opt into the BSPS2 and take the same benefits at 55, I think the critical yield would've been somewhere between that of the PPF (had it been provided) and the existing scheme, but closer to the existing scheme of 8.83%. Given this rate was significantly above both the discount rate and the regulator's upper projection rate, I think Mr F was most likely to receive benefits of a lower overall value than those provided by the BSPS2 if he transferred to a personal pension, as a result of investing in line with his cautious to moderate attitude to risk.

In my view, to have come close to achieving the level of growth required to exceed the benefits provided by the BSPS2 if he transferred to a personal pension, would have required Mr F to take a substantially higher level of investment risk than he indicated he was prepared to take. And even then I think he'd still be no better off as a result of transferring.

While the advice was geared towards a retirement age of 55, the critical yield assuming Mr F took a full pension at age 65 though the existing scheme was 6.25%. So I don't think the situation was any different here – I think Mr F would've been worse off in retirement as a result.

If the BSPS2 hadn't gone ahead, Mr F would've moved with the scheme to the PPF. Unfortunately, as I said above, D C Financial didn't produce critical yields based on Mr F taking benefits through the PPF at age 55. At age 65 the critical yield was 4.41% assuming Mr F took a full pension and 4.06% if he took tax-free cash and a reduced pension.
So at age 55 I think they would've likely been higher than those at 65 given the shorter

investment period and the longer period the benefits would potentially be in payment. Given this, it seems likely to me that the opportunity to improve on the benefits provided by the PPF was limited if Mr F transferred out of the BSPS.

So given Mr F was likely to receive lower overall retirement benefits by transferring to a personal pension (and at best, broadly the same as those provided though the PPF at age 65) for this reason alone I don't think a transfer out of the DB scheme was in Mr F's best interests.

D C Financial has said that during the time it managed Mr F's pension, it achieved an annualised growth of 5.65% which is 1.24% in excess of the critical yield for the PPF. But not only is this based on the critical yield at age 65 when the advice was predicated on a retirement age of 55, as D C Financial knows, past performance is no guarantee for future performance. I'm also mindful that D C Financial's opinion at the time, as set out in the suitability letter, was that the critical yields weren't realistically achievable. 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 a long period of time.

I can see that D C Financial says that the critical yield should not be a substantive consideration when looking at whether advice was suitable. It also says the critical yield is of limited relevance because it is based on the growth required to produce a fund large enough to purchase an annuity and Mr F didn't want an annuity. But crucially the regulator required D C Financial to consider the rate of investment growth that would have to be achieved to replicate the benefits being given up. So, it needed to provide an analysis based on the critical yield and I do think it is a relevant consideration here, particularly as I don't think Mr F could realistically say with any certainty whether he would want to take a regular income at retirement or not. He wasn't expecting to retire for at least another 12 years and perhaps longer. It's entirely possible that Mr F would want at least some guaranteed income in retirement (which he could achieve by taking benefits from the DB scheme).

But I accept that financial viability isn't the only consideration when giving transfer advice, as D C Financial has argued in this case. There might be other considerations, which mean a transfer is suitable and in Mr F's best interests, despite providing overall lower benefits. I've considered these below.

Flexibility and income needs

The key reason D C Financial's appears to have recommended Mr F transfer out of the BSPS was to provide with Mr F with flexibility – the ability to have a flexible income and to be able to retire at 55 without reduction.

But I don't think Mr F knew with any certainty whether he required flexibility in retirement. While Mr T was 43 and it wouldn't be unreasonable for him to start to think about his retirement, based on what I've seen, he didn't have any concrete retirement plans – in fact I don't think he had any real plan. And I think this is supported by what's recorded in the advice paperwork where it say that despite Mr F's preferred retirement age of 55, he was prepared to work for longer if his pension income wasn't sufficient. So it strikes me that, like most consumers, if asked, Mr F liked the idea of retiring early. But I don't think it was a specific or firm objective of Mr F's.
I've not seen anything to show or suggest Mr F had a specific need for variable income throughout retirement or that he *needed* access to a lump sum and delay taking an income at age 55. So again, when asked, Mr F might've indicated he liked the idea of taking a lump sum and delay taking an income, but I don't think this had been decided.

D C Financial said in its defence of the advice when it submitted its business file that Mr F would have maximum flexibility by transferring his pension, meaning he could access tax-free cash without having to draw income, and this could be used to clear any mortgages. But there's no evidence using tax-free cash to repay Mr F's mortgages was discussed at the time – there's nothing to this effect in the suitability report. I'll come back to this point later on.

Overall, I don't think Mr F a genuine need for flexibility at the time. So, I don't think it was a suitable recommendation for Mr F to give up his guaranteed benefits now when he didn't reasonably know what his needs in retirement would be.

D C Financial's advice paperwork refers to Mr F being concerned about the DB scheme's penalty for early retirement being too high and how a transfer would enable Mr F to retire early and suffer no reductions. I think what the adviser was referring to here was the actuarial reduction that would apply to Mr F's DB scheme, or the PPF, if he took his benefits early at age 55. The TVAS report estimated that if Mr F took a full pension under the existing scheme at age 65 his starting pension would be £17,589 a year. And at age 55 his starting pension would be £9,603. Because of the reduced revaluation factors, under the BSPS2 these figures would be lower, but in my view still close to these figures. Both would continue to escalate while in payment. Under the PPF Mr F's starting pension at age 65 was estimated to be £14,422 – no figure was provided at age 55.

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 an income at age 55 Mr F would've been receiving his pension for 10 years longer. So it's a trade-off, not a penalty. In my view the word penalty implies the DB scheme was inferior when in simple terms, it meant that Mr F couldn't have the same pension he was due at 65 at age 55 – he'd have to accept less because it would potentially be paid for longer. And I think this should've been better and more fairly explained to Mr F. Had it done so, I think it's likely Mr F would have been less concerned than D C Financial has suggested.

Likewise while taking benefits flexibly under a personal pension would allow Mr F 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. And what Mr F took would deplete the plan – so it would not be without consequence as he might be left with less than he needed later on.

And this leads me back to the point D C Financial made about Mr F using his tax-free cash entitlement to clear any outstanding mortgages at the time. As I said above, there's nothing in the advice paperwork to this effect, or that Mr F's mortgage liabilities were considered in the advice to determine how realistic Mr F retiring at 55 was. At 55 Mr F would still likely have balances outstanding on both his home and investment property. But I've not seen anything to indicate Mr F *needed* to clear his mortgage at this time. Yet if the advice was based on Mr F retiring at 55 and using his tax-free cash to clear his mortgages, not only should this have been referred to in the written advice, but I would've also expected D C Financial to have carried out analysis to determine what effect taking a lump sum to clear his debts at 55 would have on Mr F's pension fund and its ability to sustain his required income throughout his retirement. Because D C Financial didn't do this, I don't think the advice was properly considered and Mr F wasn't in a fully informed position.

Turning to Mr F's income need – it's clear that Mr F didn't know what his income need in retirement was. In the fact-find it's recorded that Mr F's estimated income requirement was 60-65% of his current income. But the suitability report said: *"You are not currently sure what level of income you will require in retirement as you are not close to retirement."*

Firstly I don't think the fact-find is very clear about what Mr F's current income was and so what the estimated 60-65% was based on. For example, it's recorded that Mr F's annual salary was £35,000, he was entitled to a bonus of £800 a month, he had £450 a month in rental income, yet his net monthly income was only £2,100. Secondly no detailed expenditure in retirement analysis was carried out by D C Financial to determine whether Mr F's estimated income requirement was realistic or achievable. It's also not clear to me whether this estimate was based on Mr F still having his mortgages or not.

Furthermore D C Financial did not ascertain Mr F's plans for his investment property and how this featured in his retirement income plans / need – did he intend to keep the property when he retired? If so, this would continue to provide him with an income, which once the mortgage was repaid (D C Financial didn't record the mortgage term) would increase his net income by the full rental amount recorded as being £450 at the time. Or did Mr F intend to sell the property and use the equity to help fund his retirement instead? With a recorded value at the time of £95,000 this was a not insignificant amount Mr F could use to supplement his income if he decided to sell it.

In addition I don't think D C Financial properly considered the role Mr F's workplace DC pension could play in his future income generation – it simply acknowledged he had it, quoted the contribution rate and said this could be available to top up his income. But given there was at least 12 years until Mr F was thinking about retirement – and likely more – at a combined employer and employee contribution rate of 16% of Mr F's salary, at age 55 and without accounting for any growth, salary increases or Mr F increasing his contributions, he would likely have a fund of around £67,000. At age 65 if Mr F continued to work, this could be worth more than £123,000. And Mr F could've used this fund to draw on flexibly by taking income and/or lump sums to supplement his income until his state pension became payable to meet his income need. So I think it's also the case that Mr F didn't have to sacrifice flexibility in any event by retaining his DB scheme benefits.

Ultimately, D C Financial had to determine whether giving up the secure, guaranteed benefits available through his DB scheme was in Mr F's best interest. And as part of this, I think it was necessary to carry out a proper assessment of Mr F's income needs taking account of all things I've described above. This would've allowed D C Financial to help Mr F understand how realistic it was for him to retire early and the information and opportunity to factor this into his future retirement plans. As I said, Mr F's retirement plans weren't formulated at this time and he'd also indicated he was prepared to work for longer if needed. By not doing this, I don't think it was possible for D C Financial to say or to demonstrate that Mr F couldn't still likely meet his future retirement income need by retaining his DB scheme benefits. So I don't think D C Financial did act in Mr F's best interests and I don't think he was therefore able to make an informed decision.

Overall, I think it was too soon to make any kind of decision about transferring out of the DB scheme. Mr F's plans weren't known or formulated at this time - he didn't know what his needs in retirement would be. So, I don't think it was a suitable recommendation for Mr F to give up his guaranteed benefits now just to have flexibility that I'm not persuaded he really needed at the time. If Mr F later had reason to transfer out of his DB scheme, which the BSPS2 would've allowed, he could've done so closer to retirement.

Death benefits

The advice paperwork records that Mr F was concerned about the 'inflexible' death benefits of the existing scheme. It said after the 50% spouses pension, it ceases and Mr F wanted to pass on any unused pension fund 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 was likely an attractive feature to Mr F. But whilst I appreciate death benefits are important to consumers, and Mr F 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 F about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement – not as a legacy provision tool. And I don't think D C Financial explored to what extent Mr F 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 underplayed. Mr F was engaged to be married - so the spouse's pension provided by the BSPS2 scheme would've been useful to his future spouse if Mr F predeceased her. I don't think D C Financial made the value of this benefit clear enough to Mr F. This was guaranteed and escalated – the spouse's pension under the BSPS2 would also be calculated as if no tax-free cash had been taken. Furthermore, it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was – so if investment returns were poor and/or Mr F lived a long life, there may not have been a large sum left, if any at all, to pass on when he died. In any event, D C Financial should not have encouraged Mr F to prioritise the potential for higher or different death benefits through a personal pension over his security in retirement.

Furthermore D C Financial recorded that Mr F had death-in-service cover through his employer if he died before retirement. So he already had lump sum death benefits available, which he could nominate his future spouse to receive if he hadn't already done so. And it also knew that Mr F was paying into his workplace DC pension scheme and he would've been able to nominate his future spouse and/or child as beneficiaries of this plan too – again if he hadn't already done so.

But if Mr F genuinely wanted to leave a legacy for his family over and above that which was already available, and which didn't depend on investment returns or how much of his pension fund remained on his death, I think D C Financial should've instead explored additional life insurance. I can see that D C Financial suggests this would've been prohibitively expensive because of Mr F's circumstances and because the sum assured would have to be at least equivalent to the transfer value. But I disagree – basing the sum assured on the transfer value of Mr F's pension benefits essentially assumed that he would pass away on day one following the transfer, and that isn't realistic. Ultimately, Mr F wanted to leave whatever remained of his pension to his spouse and / or child, which would be a lot less than this if he lived a long life and/or if investment returns were poor. So, the starting point ought to have been to ask Mr F how much he would ideally like to leave to his family, after taking into account the above existing means. And this could've been explored on a whole of life or term assurance basis, which was likely to be a lot cheaper to provide. I think this was a viable alternative and one D C Financial should've properly explored.

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 F. And I don't think D C Financial did enough to explore or highlight the alternatives available to Mr F to meet this objective.

Control or concerns over financial stability of the DB scheme

D C Financial's advice paperwork says Mr F was concerned about the future of the DB scheme and he was concerned about entering the PPF and losing flexibility.

I have no doubt that Mr F was concerned about his pension. His employer had recently made the announcement about its plans for the scheme and he was worried for his pension given the general uncertainty. There was also lots of negative sentiment about the PPF. So it's quite possible that Mr F was leaning towards the decision to transfer because of the concerns he had about his employer and what might happen. But it was D C Financial's obligation to give Mr F an objective picture and recommend what was in his best interests.

As I've already explained, at the time of the advice it seemed likely the BSPS2 was going to go ahead. So I think D C Financial should've delayed its advice and waited for the details of the BSPS2 so it could properly take the benefits available to Mr F through the BSPS2 into account. And I think this would've alleviated Mr F's concerns about the scheme moving to the PPF.

In any event, even if there was a chance the BSPS2 wouldn't go ahead, and the scheme moved to the PPF, I think that D C Financial should've reassured Mr F that the scheme moving to the PPF wasn't as concerning as he thought or was led to believe. As I set out Mr F didn't have any real retirement plans. But I think the income available to Mr F through the PPF would've still provided a solid base, which his other means could supplement to likely meet his income need at retirement. Importantly he was also unlikely to be able to exceed this by transferring out. And although the increases in payment in the PPF were lower, the income was still guaranteed and was not subject to any investment risk. Mr F might not have been able to later transfer out of the PPF – but for the reasons I've set out earlier, I don't think Mr F would've needed to. So I don't think that Mr F's concerns should've led to D C Financial recommending he transfer out of the DB schemes altogether.

Summary

I accept that Mr F was likely motivated to transfer out of the BSPS and that his concerns about his employer were real. And I don't doubt that the flexibility, control and potential for higher or different death benefits on offer through a personal pension would've sounded like attractive features to Mr F. But D C Financial wasn't there to just transact what Mr F might have thought he wanted or sounded like a good idea. The adviser's role was to really understand what Mr F needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr F was suitable. He was giving up a guaranteed, risk-free and increasing income, whether through the BSPS2 or the PPF at a time when I don't think his retirement plans were in any way formulated. By transferring to a personal arrangement Mr F was likely to receive lower overall retirement benefits at his retirement age. And I don't think there were any other particular or compelling reasons which would justify the transfer and outweigh this. So, I don't think it was in Mr F's best interests for him to transfer his DB scheme to a personal pension at this time.

So, I think D C Financial should've advised Mr F that he should not transfer the benefits of his DB scheme to a personal pension arrangement. And if things had happened as they should have and D C Financial had waited until the details of the BSPS2 had been known before formulating its advice, I think it should've recommended that Mr F opt into the BSPS2.

I appreciate that the BSPS2 wasn't guaranteed to go ahead at this time. But I think everything pointed to it going ahead. Because Mr F's retirement plans were not set in stone and he said he was prepared to continue to work beyond 55 if needed, 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 F would've retained the ability to transfer out of the scheme nearer to his retirement age - if he needed to. Also, because Mr F was due to be married, the spouse's pension would be set at 50% of his pension at the date of death, and this would be calculated as if no lump sum was taken at retirement (if Mr F chose to do so). The annual indexation of his pension when in payment was also more advantageous under the BSPS2.

Of course, I have to consider whether Mr F would've gone ahead anyway, against D C Financial's advice. D C Financial says that, considering Mr F was fully aware of the benefits he was sacrificing and bearing in mind the objectives he was keen to achieve, even if they'd recommended against transferring, he would've continued with the transfer as an insistent client.

I've considered this carefully, but I'm not persuaded that Mr F would've insisted on transferring out of the BSPS against D C Financial's advice. I say this because, while Mr F was motivated to transfer when he approached D C Financial, on balance, I still think he would've listened to and followed D C Financial's advice if things had happened as they should have. Mr F was not an experienced investor who, in my view possessed the necessary skill, knowledge or confidence to go against the advice they were given, particularly in complex pension matters. So, if D C Financial had provided Mr F 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 F's concerns about his employer were so great that he would've insisted on the transfer knowing that a professional adviser, whose expertise he had sought out and was paying for, didn't think it was suitable for him or in his best interests. If D C Financial had properly considered Mr F's retirement income and expenditure need and explained that he could likely meet his objectives without risking his guaranteed pension, I think that would've carried significant weight. So, I don't think Mr F would have insisted on transferring out of his scheme against D C Financial's advice.

In light of the above, I think D C Financial should compensate Mr F for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology. And as per the above, it is the benefits available to him through the BSPS2 that should be used for comparison purposes.

I can see the investigator also recommended an award of £250 for the distress and inconvenience the matter has caused Mr F.

So I've also thought about whether it's fair to award compensation for distress and inconvenience - this isn't intended to fine or punish D C Financial – which is the job of the regulator. But I think it's fair to recognise the emotional and practical impact this had on Mr F. Taking everything into account, including that Mr F is now at the age when his retirement provision is of increasing importance to him, I think the unsuitable advice has caused him some distress. So I think an award of £250 is fair in all the circumstances.

I can see that D C Financial says that it shouldn't be responsible for any losses as a result of any subsequent 'bad investment advice' – a reference I believe to any losses stemming from those investments after it ceased managing Mr F's pension investment. But the investments would not have arisen at all were it not for D C Financial's unsuitable advice.
So, in the circumstances I don't think it is fair to conclude that D C Financial's responsibility for any loss Mr F has suffered as a result of the unsuitable advice he received should be capped at the point it ended its ongoing servicing agreement with Mr F.

Finally I've thought about Mr F's representative's point regarding the 15% deduction from any redress payable, to take into account the tax Mr F 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 F back into the scheme as if the transfer out hadn't happened. So, overall, I remain of the view that the redress proposed fairly compensates Mr F for the impact of the unsuitable advice he received.

Putting things right

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 F 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.

Mr F 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 F.

A fair and reasonable outcome would be for the D C Financial to put Mr F, as far as possible, into the position he would now be in but for D C Financial's unsuitable advice. If suitable advice had been given, Mr F would most likely have opted into the BSPS2. So it is the benefits under the BSPS2 which should be used for comparison purposes.

D C Financial 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 F 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 F's acceptance of the decision.

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

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

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

In addition, D C Financial should pay Mr F £250 for the distress and inconvenienced caused in this matter.

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 D C Financial pays the balance.

My final decision

Determination and money award: I uphold this complaint and require D C Financial Limited to pay Mr F 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 F 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 F 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 T the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr F.

If Mr F 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 F can accept my decision and go to court to ask for the balance. Mr F 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 F to accept or reject my decision before 27 February 2023.
Paul Featherstone
Ombudsman