DRN-3835317

The complaint

Mr R 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 R'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 R was concerned about what the recent announcements by his employer meant for the security of his DB scheme, so he sought advice. In October 2017 Mr R 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 D was 28 years old; he was working full-time; he was single but living with his partner; he had two children; he owned his own home with an outstanding mortgage of around £133,000 that had 25 years remaining; and he had no savings or investments. D C Financial also carried out an assessment of Mr R's attitude to risk, which it deemed to be 'moderate' – a score of 5 on a scale of 1 to 10.

On 17 October 2017 D C Financial issued its formal written advice and it recommended Mr R transfer his BSPS benefits into a personal pension arrangement and invest the proceeds in investment funds, which D C Financial deemed matched Mr R's attitude to risk. In summary the reasons for the recommendation were to provide flexible income; to provide the ability for Mr R to retire early and suffer no reductions; to provide better death benefits; and a transfer would give Mr R control and avoid the fund entering the PPF.

Around the same time, 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 R's pension transfer completed in January 2018 and around £107,800 was received into the new personal pension.

Mr R complained to D C Financial in 2021 about the suitability of the transfer advice.

D C Financial didn't uphold Mr R's complaint. In summary it said the recommendation was suitable because it met Mr R's stated objectives, including providing better death benefits given he wasn't married and enabling him to take control of his pension removing the uncertainty about future changes to the scheme. It disagreed with Mr R's complaint point that he didn't have the capacity to bear any risk with his guaranteed benefits because it said he had his workplace pension scheme and his state pension to cover his basic retirement needs. And it said the point about annuity rates being at historic lows wasn't relevant to Mr R's needs because he made it clear that he wouldn't consider buying an annuity unless forced to, and in any event it would be counterproductive to purchase an annuity or guaranteed income with this type of pension fund.

Dissatisfied with its response Mr R asked this service to consider his complaint and an investigator upheld it and said D C Financial should pay Mr R compensation. In summary they said they didn't think the advice was suitable. They said given the growth rate required to match Mr R's scheme benefits, he was unlikely to improve on them as a result of the transfer – something they said D C Financial acknowledged in the suitability report which said the critical yield was high and unlikely that an investment could provide the necessary return. They said Mr R already had flexibility through his current workplace pension so he wasn't giving up flexibility by retaining his BSPS benefits. They said death benefits wasn't a justifiable reason for the transfer – Mr R's pension was intended to provide him with a pension income, it wasn't a legacy planning tool. And they said that Mr R's concerns about the BSPS didn't outweigh the need for D C Financial to make a recommendation that was in Mr R's best interests. They said that had a suitable advice been given, D C Financial should've advised Mr R to transfer his benefits to the BSPS2.

D C Financial disagreed. In doing so it provided a substantive response, which I have read in full. But in summary it said the BSPS2 did not exist at the time so it couldn't have recommended Mr R 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 R didn't intend to purchase an annuity. It said the past performance and what had happened since the advice, which it says shouldn't be disregarded, showed that in any event the level of growth required was achievable – during the time it managed Mr R's portfolio it achieved returns of 5.11%. But it said 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 met Mr R's objectives. Overall it said it still felt that the recommendation to transfer was suitable as it allowed Mr R to achieve his goals. It also argued that it was not responsible for any losses caused by 'bad investment advice' and said that 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.

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 R. 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 R'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 R'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 at the time of the written advice, the Regulated Apportionment Arrangement ('RAA') (under pensions law, a RAA is a restructuring mechanism which allows a financially troubled employer to detach itself from its liabilities in respect of a DB pension scheme) was approved by the Pensions Regulator. As a result, scheme members would have a choice - either move into a new scheme (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 R. I think it's reasonable to say that, in light of the announcement and knowing that Mr R would be receiving his 'Time to Choose' information in October 2017, D C Financial should've waited for the details of the new scheme and based the analysis and its advice on the BSPS2 instead. That way Mr R would've had all the relevant information to make a properly 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 R through the PPF. But I think D C Financial is overstating the chance of the BSPS2 not happening. As I said above, the RAA had been formally approved and in my view all of the available information form the scheme trustees indicated that the new scheme would go ahead. So for these reasons I still think D C Financial should've waited and taken the benefits available to Mr R through the BSPS2 into account in formulating its advice so that he was able to make a properly informed decision.

The advice was given after the regulator gave instructions in Final Guidance FG17/9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published by the Financial Ombudsman Service on our website. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor.

I can see that D C Financial has said it disagrees with the use of discount rates. But I think it is a reasonable additional consideration when seeking to determine what level of growth was reasonably achievable at the time of the advice. Under COBS 19.1.2, the regulator required businesses to compare the benefits likely to be paid under a DB scheme with those payable under a personal pension by using reasonable assumptions. The discount rate would be considered a reasonable assumption of likely returns. And businesses were free to refer to it. So, whilst I agree 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 for a typical investor.

Mr R was 28 at the time of the advice and the advice paperwork records that his preferred retirement age was 57. The TVAS dated 9 October 2017 set out the relevant critical yields; at age 65 it was 6.18% if Mr R took a full pension through the existing scheme and at age 57 it was 6.95%. The TVAS didn't provide the critical yields for a reduced pension and tax-free cash. The critical yields required to match the benefits provided through the PPF at age 65 were 4.77% if Mr R took a full pension and 4.55% if he took tax free cash and a reduced pension. And at age 57 they were 5.7% and 5.46% respectively.
But as I've said above, Mr R remaining in his existing DB scheme wasn't an option at this time. So, the critical yields applicable to the BSPS2 benefits should've been provided. The lower annual increases under the BSPS2 would've likely decreased the critical yields somewhat. But I still think they would've likely been higher than those reflecting the PPF benefits.

The relevant discount rate closest to when the advice was given which I can refer to was published by the Financial Ombudsman Service for the period before 1 October 2017, and was 4.7% per year for 36 years to retirement – it was the same rate per year for 28 years to retirement based on a retirement age of 57. I've kept in mind that the regulator's projection rates had also remained unchanged since 2014: the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

I've taken this into account, along with the composition of assets in the discount rate, Mr R's recorded '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 R 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 R took a full pension at 57 (the retirement age the advice appears to have predicated on) was 6.95% through the existing scheme and 5.7% through the PPF. If Mr R were to opt into the BSPS2 and take the same benefits at 57, I think the critical yield would've been somewhere between these two figures, but closer to the existing scheme of 6.95%. Given these rates were above both the discount rate and the regulator's middle projection rate, I think Mr R 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 a 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 R to take a higher level of investment risk than I think 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 57, the critical yield assuming Mr R took a full pension at age 65 though the existing scheme was 6.18%. So I don't think the situation was any different here – I think Mr R would've been worse off in retirement as a result.

If the BSPS2 hadn't gone ahead, Mr R would've moved with the scheme to the PPF. As I said above, at age 57 the critical yield was 5.7% assuming Mr R took a full pension. And at age 65 it was 4.77%. While the critical yields based on a reduced pension were lower at 5.46% and 4.55% respectively, I don't think the position was very different here – I think even based on a retirement age of 65 it seems likely to me that the opportunity to improve on the benefits provided by the PPF was limited if Mr R transferred out of the BSPS.

D C Financial has said that during the time it managed Mr R's pension, it achieved a return of 5.11%. But this is lower than the growth rates required to match Mr R's scheme benefits at 57, which as I said is the retirement age the advice was based on. And D C Financial's own opinion at the time, as set out in the suitability letter, was that the critical yields weren't realistically achievable. In any event, past performance is no guarantee for future performance, 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 as in this case.

I can see that D C Financial says that the critical yield should not be a substantive consideration when looking at whether the 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 R 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 R 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 28 years and perhaps longer. It's entirely possible that Mr R 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 R's best interests, despite providing overall lower benefits. I've considered these below.

Flexibility and income needs

It appears the key reason D C Financial's recommended Mr R transfer out of the BSPS was to provide with him with flexibility – the ability to have a flexible income and to be able to retire at 57 without incurring a reduction to his pension.

But I don't think Mr R knew with any certainty whether he required flexibility in retirement. And in any event I don't think he needed to transfer his DB scheme benefits to achieve it.

Crucially Mr R was only 28 at the time of the advice. And based on what I've seen, he didn't have concrete retirement plans – in fact I don't think he had any real plans. Mr R's preferred target retirement age was 57 – but I think this was simply driven by the earliest age legislation permitted accessing pension benefits rather than a specific objective of Mr R's. I think Mr R's retirement was so far in the future that he couldn't reasonably have had any set idea or plan as to what age he wanted to retire. As Mr R still had the majority of his working life in front of him before he could think about accessing his pension, I think it was too soon to make any kind of decision about transferring out of the DB scheme.

I accept Mr R might have liked the idea of retiring early, but he already had this option available to him - he didn't have to transfer out to achieve this. I accept that Mr R couldn't take his DB scheme benefits flexibly. Although he could choose to take a cash lump sum and a reduced annual pension, Mr R had to take those benefits at the same time. But nothing indicates that Mr R had a need to take a cash lump sum and defer taking his income – for example it seems likely that Mr R's mortgage would be repaid prior to his retirement - or to vary his income throughout retirement. So while Mr R might have indicated he liked the idea of taking a lump sum and delay taking his income, I don't think this had been decided. It strikes me that 'flexibility' was simply a feature or a consequence of transferring to a personal arrangement rather than a genuine objective of Mr R's.

So, I don't think it was a suitable recommendation for Mr R 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 R being concerned about the DB scheme's penalty for early retirement being too high and how a transfer would enable Mr R 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 R's DB scheme, or the PPF, if he took his benefits early at age 57 and before the scheme's normal retirement age.

I accept the idea of potentially receiving less income a year wasn't something Mr R would be happy about. 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 an income at age 57 Mr R would've been receiving his pension for eight 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 R couldn't have the same pension he was due at 65 at age 57 – he'd have to accept less because it would potentially be paid for longer.

Likewise while taking benefits flexibly under a personal pension would allow Mr R 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 R 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 I think this should've been better and more fairly explained to Mr R. Had D C Financial done so, I think it's likely Mr R would have been less concerned than it has suggested.

Despite Mr R not having an apparent need for flexibility, importantly Mr R was contributing to his workplace Defined Contribution ('DC') pension scheme, something I'm not persuaded D C Financial properly considered in terms of the role this could play in Mr R 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 Mr R was contributing 6% of his salary and his employer a further 10% - so a total of 16% of Mr R's salary was being invested here. And while Mr R was unhappy with how his employer had handled the BSPS, there was no indication that he intended to change employer prior to retirement. So given Mr R had the potential for at least another 28 years' contributions and probably more - without accounting for growth, salary increases, or increases to Mr R's contribution rate - this had the potential to be worth in excess of £147,000 and likely substantially more.

The nature of a DC scheme means this already provided Mr R with flexibility – he wasn't committed to take these benefits in a set way. Mr R could've taken lump sums as and when required and adjusted the income he took from it according to his needs. So, I think if Mr R retained his DB pension, this combined with his new workplace pension, would've given him the flexibility to retire early - *if* that's what he ultimately decided – and would likely meet his income needs.

So in any event, Mr R didn't need to transfer his DB scheme benefits at this stage to a personal pension arrangement in order to achieve flexibility in retirement. Of course, if Mr R did in fact have a greater need for flexibility beyond that which he already had, I think this could've been explored closer to his intended retirement age, which as I've said was still many years away. And by opting into the BSPS2, he would've retained the ability to transfer out nearer to retirement, *if* indeed it was required. This ought to have been clearly explained by D C Financial.

Turning to Mr R's income need – I can see in the estimated income required section of the fact-find, a figure of £600 a month each for Mr R and his partner was recorded. But there's no evidence that D C Financial carried out a detailed income and expenditure in retirement analysis to determine this and whether this was appropriate or realistic. And the suitability report simply said: *'You don't know what level of income you will require in retirement as this is a considerable time off'.* So it strikes me that Mr R didn't really know what his income need in retirement would be – presumably because his retirement was so far off. And in my view this is a key point – why did Mr R need to transfer now when he didn't know what his plans were?

But as I said above, there's nothing to indicate that Mr R needed variable income throughout his retirement. And in my view, nothing to indicate that the income from the BSPS2 or the PPF (if the new scheme didn't go ahead) wouldn't have provided Mr R with at least a solid income foundation upon which his other provision could supplement, to likely meet his overall need.

For example, D C Financial's analysis estimated that if Mr R took a full pension under the existing scheme at age 57 his starting pension would be £7,398 a year. And at age 65 this rose to £11,861.Because of the reduced revaluation factors, under the BSPS2 these figures would be lower, but in my view still close to these figures. Although it's unlikely this alone would've met Mr R's retirement income need in full, I think it nevertheless still provided a useful and guaranteed income element. And importantly a solid foundation upon which Mr R could use with his other pension provision, to meet his overall need until his state pension became payable at age 68, rather than risk things to achieve it. As I said above, Mr R would've likely had a not insignificant pension to draw on through his DC scheme. And this fund could've been used flexibly to meet Mr R's needs by taking income and/or lump sums. It would also allow him to take the DB scheme benefits together, or at age 65 if he so chose – and not incur an actuarial reduction – depending on when he wanted to retire and what his income need was at the time. It's also the case that the amount Mr R took from the DC scheme could've been reduced, if necessary once he reached state pension age. I'm mindful too that D C Financial recorded Mr R had surplus income each month - so he had the potential to build savings over the remainder of his working life, which he could use later on to supplement his needs in retirement.

If the BSPS2 hadn't gone ahead, Mr R would've moved with the scheme to the PPF. At age 57 D C Financial indicated he'd be entitled to a pension of just over £6,700 and at age 65 it was just over £8,800. And while this was likely lower that the pension he'd be entitled to under the BSPS2, I don't think it was substantially lower such that it should've made a difference to the recommendation at this time. As I've said above, Mr R's retirement plans and needs weren't known and he would've had his DC scheme to draw on flexibly until his state pension became payable.

Ultimately I think it was too soon to make any kind of decision about transferring out of the DB scheme. Mr R didn't know what his needs in retirement would be or when, so I don't think it was a suitable recommendation or in Mr R's best interests to give up his guaranteed benefits now just to have flexibility that I'm not persuaded he really needed at the time. If Mr R 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 R was concerned about the 'inflexible' death benefits of the existing scheme and he wanted to leave his pension fund to his family.

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 R. But whilst I appreciate death benefits are important to consumers, and Mr R 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 R about what was best for his retirement provisions.

A pension is primarily designed to provide income in retirement – not as a legacy provision tool. So I don't think the potential for greater or different death benefits should have been prioritised over this and Mr R's security in retirement.
And I say potential, because the sum left on Mr R's death was dependent on investment returns – so if he lived a long life, and/or investment performance was lower than expected, there may not have been a large sum to pass on anyway.

While Mr R was single (co-habiting) at the time, he was young and it's possible he could've married later on. In which case the spouse's pension provided by the BSPS2 scheme would've been useful to his wife if Mr R predeceased her. This was guaranteed and escalated – under the BSPS2 the spouse's pension would also be calculated as if no tax-free cash had been taken. It's also the case that it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was.

But in any case, D C Financial recorded that Mr R 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 partner to receive if he hadn't already done so. And it also knew that Mr R was paying into his workplace DC pension scheme and he would've been able to nominate his partner and/or children as beneficiaries of this plan too – again if he hadn't already done so.

Furthermore, if Mr R 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. And the starting point for this needn't have been to assume Mr R required a sum assured equivalent to the transfer value of his pension. This is because basing the sum assured on the transfer value would essentially assume that Mr R would pass away on day one following the transfer, which isn't realistic. Ultimately, Mr R wanted to leave whatever remained of his pension to his spouse and / or children, 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 R 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, particularly given Mr R's age. 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 R. And I don't think D C Financial did enough to explore or highlight the alternatives available to Mr R to meet this objective.

Control or concerns over financial stability of the DB scheme

D C Financial's advice paperwork says Mr R 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 R 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 R 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 R 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 waited for the details of the BSPS2 so it could properly take the benefits available to Mr R through the BSPS2 into account. And I think this would've alleviated Mr R'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 R that the scheme moving to the PPF wasn't as concerning as he thought or was led to believe. As I set out Mr R didn't have any real retirement plans. But I think the income available to Mr R 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 R might not have been able to later transfer out of the PPF – but for the reasons I've set out earlier, there was no apparent need for him to do so. So I don't think that Mr R's concerns should've led to D C Financial recommending he transfer out of the DB schemes altogether.

Summary

I accept that Mr R 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 R. But D C Financial wasn't there to just transact what Mr R might have thought he wanted or sounded like a good idea. The adviser's role was to really understand what Mr R needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr R 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 R was likely to receive lower overall retirement benefits at his retirement age – whether at age 57 or 65. 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 R'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 R 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 were known before formulating its advice, which was imminent at the time of its formal written advice, I think it should've recommended that Mr R opt into the BSPS2.

I appreciate that the BSPS2 wasn't guaranteed to go ahead at this time as D C Financial has repeatedly said. But as I've already said, I think everything pointed to it going ahead, so this ought to have been the position D C Financial adopted. Because Mr R's retirement plans were very far from being set in stone, 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 R would've retained the ability to transfer out of the scheme nearer to his retirement age - if he needed to. Also, the annual indexation of his pension when in payment was also more advantageous under the BSPS2.

Of course, I have to consider whether Mr R would've gone ahead anyway, against D C Financial's advice.

I've considered this carefully, but I'm not persuaded that Mr R would've insisted on transferring out of the BSPS against D C Financial's advice. I say this because, while Mr R 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 R was not an experienced investor – the fact find records he had limited knowledge and in my view he had no real direct investment experience.

So I don't think he was someone who 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 R 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 R'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 R's retirement needs 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 R 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 R 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 £300 for the distress and inconvenience the matter has caused Mr R.

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 R. Taking everything into account, including the importance Mr R's retirement provision means to him, I think the unsuitable advice has caused him some distress. So I think an award of £300 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 the investments choices made after it ceased managing Mr R'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 R has suffered as a result of the unsuitable advice he received should cease at the point its ongoing servicing agreement with Mr R ended.

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 R 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 R 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 R.

A fair and reasonable outcome would be for the D C Financial to put Mr R, 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 R 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 R 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 R's acceptance of the decision.

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

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr R'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 R 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 R 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 R.

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 R £300 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 R 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 R 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 R 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 R the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr R.

If Mr R 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 R can accept my decision and go to court to ask for the balance. Mr R 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 R to accept or reject my decision before 2 March 2023.
Paul Featherstone
Ombudsman