DRN-3841980

The complaint

Mr E complained that he was given unsuitable advice to transfer his defined benefit (DB) British Steel Pension Scheme (BSPS), to a type of personal pension plan, in 2017.

David Stock & Co Limited is responsible for answering this complaint and so to keep things consistent, I'll refer mainly to "David Stock".

What happened

In March 2016, Mr E's employer announced that it would be examining options to restructure its business, including decoupling the BSPS 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 personal pension arrangement.

In May 2017, the Pension Protection Fund (PPF) made the announcement that the terms of a Regulated Apportionment Arrangement (RAA) had been agreed. That announcement said that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr E's employer would be set up – the BSPS2.

In October 2017, members of the BSPS were being 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 choices was 11 December 2017 (and was later extended to 22 December 2017).

Mr E was concerned about what the announcement by his employer meant for the security of his preserved benefits in the BSPS. He was unsure what to do and was referred to David Stock which is responsible for providing the pension advice. Information gathered about his circumstances and objectives at the time of the recommendation were broadly as follows:

- Mr E was 39 years old, married and with one dependent child. He was described as being in good health and at the time.
- Mr E lived in a home valued at around £350,000 with a mortgage outstanding of around £160,000 and 19 years left to run. David Stock's records as regards Mr E's earnings are inconsistent. However, from a 'file note' the business made I've taken the higher figure of around £38,000 per year (gross). Mrs E also worked and earned over £40,000. After expenses they had some disposable monthly income left over.
- The cash equivalent transfer value (CETV) of Mr E's BSPS was approximately £277,263. The normal retirement age (NRA) was 65.
- Mr E had joined the new TATA defined contribution (DC) pension scheme as a consequence of the BSPS ceasing new contributions.

It seems David Stock had a number of advice sessions with Mr E in the autumn of 2017 until his pension was eventually transferred in early 2018. The business set out its advice initially in a suitability report on 30 October 2017. There were further discussions about Mr E's attitude to risk (ATR) and the types of investments he might move his funds into. Ultimately, David Stock recommended that Mr E transfer away to a personal pension and use a discretionary fund manager (DFM) to manage his funds and fund selection in the future. David Stock said this would allow Mr E to achieve his objectives. Mr E accepted this advice and so transferred out. In 2022 Mr E complained to David Stock about its advice, saying he shouldn't have been advised to transfer out to a personal pension.

Mr E referred his complaint to our Service. One of our investigators looked into the complaint and said it should be upheld. In response, David Stock said it hadn't done anything wrong and was acting on the financial objectives Mr E had at the time.

As this complaint can't be resolved informally, it's come 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 also 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'). 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.

<u>*The applicable rules, regulations and requirements*</u>

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 David Stock'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.

I have further considered that 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, David Stock should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr E's best interests.

I've used all the information we have to consider whether transferring away from the BSPS to a personal pension was in Mr E's best interests. I have also carefully considered the final response letter from David Stock. I've carefully considered too, the various other responses made to the points contained within our investigator's view.

Having done all this, I'm upholding Mr E's complaint.

Financial viability

David Stock referred in its transfer analysis and suitability report to 'critical yield' rates. The critical yield is essentially the average annual investment return that would be required on the transfer value - from the time of advice until retirement - to provide the same annuity benefits as the DB scheme.

The critical yield comparison was a requirement from the regulator at the time when advising clients on DB transfers. It's also important to point out that the critical yield comparison is only one of a number of different metrics I've used to compare the different schemes. And in my view, these all point one way – that Mr E was probably going to receive lower pension benefits overall, as a result of transferring to a type of personal pension plan.

David Stock said that the critical yield required to match the benefits at the age of 65 in the BSPS, was 4.18% if Mr E took a pension without a tax-free lump sum. If taking a tax-free lump sum, the adviser implied the critical yield would be slightly lower but there was no apparent analysis or accurate critical yield behind this. David Stock also didn't calculate a critical yield rate for an earlier retirement, despite it saying Mr E had apparently expressed a desire to retire early. However, as I'll explain more about later, retirement was still a very long way off for Mr E and so I very much doubt whether retiring at 57 -to- 60, which is what was recorded, was anything more than something he just aspired to rather than being part of a real plan. However, as I'll say more about below, David Stock places some weight on early retirement as being a legitimate factor in the overall recommendation to transfer to a personal pension. So, if the adviser thought this was a credible part of the transfer rationale, they should have clearly set out the critical yields relating to an early retirement at the time.

I haven't calculated what a critical yield for retiring at, say 57, would have been. However, our investigator hypothesised that it could be higher and given my experience, I don't think that assertion is necessarily wrong. To be clear then, I think the failure to provide critical yield rates for retirement ages of around 57 and / or 60 was significant as this should have been shown to Mr E. These would have given him a much clearer picture and information with which he could make an informed decision.

In 2017 we were in a period of sustained low interest rates and bond yields. And I don't think that whatever critical yield figures one uses here, that there was any sound evidence that achieving enough growth outside the DB scheme, to make transferring financially viable, was ever going to be achievable over a sustained period. I say this with the following in mind.

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.

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 was only 4.6% per year for just over 25 years to retirement (age 65). If considering an early retirement, at the age of 57, the discount rate was only 4.4% (over 17 years to retirement). I've also kept in mind that the regulator's upper projection rate at the time was 8%, the middle projection rate was 5%, and the lower projection rate was 2%.

At the time, David Stock assessed Mr E's ATR as "moderately balanced" although I've noted the ATR discussion appears to have taken place *after* the suitability report had already been produced. I don't think Mr E was an experienced investor; he didn't own any shares at the time and there's some reliable evidence that he didn't want to accept much investment risk.

I therefore don't think the adviser had enough information or evidence to recommend transferring away from a DB scheme based on a financial comparison basis. Growth assumptions close to the regulator's lower-end projections and also to the discount rate were most relevant here in my view. So, I think growth assumptions of around 4½% were realistic here. Whilst this was very marginally above the critical yield figure for the BSPS2 and retiring at 65, it was likely below a similar scenario if retiring at 57. And because David Stock failed to show Mr E these different critical yield rates, there is certainly no clear evidence that by transferring away he'd be financially better off. In fact, it's very important to remember here that the effect of charges and fees associated with a personal pension such as the one being recommended to Mr E, would have further reduced the likely growth. Mr E was being charged fees by David Stock – and there were fund and management charges yet to come from the recommended DFM. These were all additional costs that I think Mr E would have found very difficult to work out. With a DB scheme he didn't have these costs. So, I think all this showed there would be a very real 'drag' on performance. To even match the published critical yield rates, Mr E's investments would need to exceed beyond what I think David Stock was telling him. So overall, I think that achieving the stated and unstated critical yield(s), year-on-year, upon transferring out, was unlikely.

In my view, there would be little point in irreversibly transferring away from a DB scheme at the age of 39 to obtain lower – or even similar benefits – to that scheme. There would be still less reason to take that course of action after deducting the fees and charges as I've described above as these clearly implied growth outside the DB scheme would probably be lower. So there was a very real risk of Mr E's pension benefits being lower at retirement than they otherwise would be.

I've also noted that using the NRA of 65, David Stock's own transfer analysis said that even in order to purchase an annuity to provide benefits of equal value to the benefits provided by the existing scheme, assuming *no* spouse's pension, *no* increases in payment and *no* guarantee at retirement, the estimated fund required at 65 was £401,070. These figures are found in David Stock's own analysis based on data the regulator required businesses to refer to at the time. To be clear, the sum above was to buy a much inferior pension. And because this was far above Mr E's CETV, it represents, in my view, a revealing window into the value of the guaranteed pension Mr E could be giving up by transferring away to a personal plan, rather than a similar DB scheme that was on offer here.

Elsewhere in its transfer analysis, David Stock also made mention of the PPF, which it described as a compensation scheme providing a *"safety net"* for pension schemes when the sponsoring employer becomes insolvent. David Stock said the critical yields to match the benefits available through the PPF at age 65 were lower. But these yields related to the *reduced* benefits available with the PPF and I don't think Mr E would have wanted to transfer to this scheme. Again, there were no critical yields for retiring earlier and I reiterate that the effect of charges and fees associated with a personal pension such as the one being recommended to Mr E, would have further reduced the likely growth.

I therefore think it's fair to say that from a financial comparison perspective, David Stock's own figures, shown in its suitability report and transfer analysis documents, showed that transferring to a personal pension plan would mean Mr E would likely receive lower pension benefits in the longer term, when compared against the BSPS2.

I've also considered some projections David Stock used to help show that if he transferred out to a personal plan, the funds could last Mr E well into retirement. Again, I think most of these were based on growth projections which were based on past performance. It's also fair to say these were not comparing like-with-like. What David Stock was showing Mr E were comparisons with plans which lacked the guarantees and benefits of a DB scheme.

Of course, according to David Stock, its recommendation that he should transfer out to a personal pension was not wholly based on the financial comparisons with his current scheme options alone. Rather, David Stock said Mr E also had other reasons to transfer away, so I've thought about all the other considerations which might have meant a transfer was suitable for him, despite providing the overall lower benefits mentioned earlier.

I've considered these below.

Other reasons to transfer

David Stock recommended and transacted a transfer to a personal pension plan based on what it said were Mr E's wider objectives. I have used all the documents we still have from the advice sessions to summarise the following themes as supporting the recommendation to transfer away.

However, I think the suitability report was a poor document. This was the adviser's opportunity to set out clearly what the options were and the rationale behind any recommendations that were being made. In my view, it lacked clarity. To be clear, it was David Stock that was the regulated party here and Mr E was being charged for its advice. So, the adviser wasn't just there to transact what Mr E – an inexperienced amateur – thought might have been a good idea. The adviser's role was to fully examine Mr and Mrs E's situation and provide advice that was in the client's best interests.

However, the adviser said in the suitability report that Mr E was single and that he might therefore not need the DB scheme's spouse death benefits; I can only assume this erroneous information was from another client's report. References were made to what other steelworkers might or might or do which I don't think was appropriate. And the overall transfer-away rationale just wasn't brought out in the open in a clear way. But I've drawn out the following themes as being significant in the overall recommendation for Mr E to transfer to a personal pension arrangement.

- David Stock said Mr E wanted to retire early. The ages of 57 -to- 60 were mentioned.
- By transferring, he could have greater flexibility and control over his pension.
- Mr E was worried about the financial security of the DB scheme(s) on offer.
- Transferring would ensure the full value of any fund could be inherited as a death benefit.
- The transfer value was high.

I have therefore considered all these issues in turn.

Retiring early

I've taken into account that Mr E approached David Stock for advice because of the uncertainties he faced with the BSPS. He clearly didn't want to enter the PPF.

But as I've mentioned above, Mr E was still only 39 years old and in good health. In this context, I think David Stock's adviser saying Mr E had specific uses for his retirement funds lacked any credibility.

I think it's important to focus for a moment here on Mr E's very young age by pension standards. The evidence I've seen here is that Mr E – understandably - had no concrete plans whatsoever for his retirement. With over 25 years still left to when he'd be actually contemplating retiring if using his NRA, there's simply no way that what he might possibly use the money for, or how much he thought he might need, should have been major influences in him deciding to irreversibly move away from a DB scheme. Doing so involved an investment risk which I've showed above could mean lower overall financial benefits at retirement.

So whilst I'm sure, like most people, Mr E probably wanted to stop working as early as possible, I think what he and the adviser discussed could only ever have been general retirement aspirations on his part. In reality, there was no plan to retire early. It was simply far too early to speculate about this.

I also think David Stock's dealings with this issue are contradictory. To a large degree, it is still defending the complaint on the grounds of greater flexibility, not least because of a desire to retire considerably earlier than the NRA. 57 is very early to cease working and I think it's fair to say that substantial planning, backed up by financial resources, is required. However, if 57 really was a retirement age being targeted here, then the critical yields should have been published and there ought to have been a clear pathway explaining how such an early retirement was possible. I don't think any of this was present in this case.

Flexibility

I also can't see that Mr E required flexibility in retirement in the way the adviser suggested. In any event, flexibility was poorly defined by David Stock. I therefore think this was no more than a 'standard' objective used to help justify the recommendation to transfer out to a personal plan. For example, I've seen nothing that showed Mr E required changing how his retirement benefits ought to be paid. I don't think this could have been predicted whilst still so far away from retirement age. He already had a new and more flexible DC pension with the new TATA DC fund. This was being contributed towards by both Mr E and his employer and still had up to 25 years left to run (17 years if he did eventually retire very early). So, this other pension would have afforded Mr E any flexibility he might have needed in the years ahead.

Again, on this specific point, I think the suitability report was very unclear. It even said at one point that *"our reaction is to generally dissuade you, as to an extent that is our role, and to highlight the major disadvantage of managing your own pension…"*. I take this to mean that the adviser themselves had some serious reservations – but David Stock went on, nonetheless, to recommend that Mr E ought to transfer to a specific product overseen by a DFM.

I've seen nothing explaining why Mr E wouldn't want to continue membership of a DB scheme and to use that scheme in exactly the way it was originally intended. Indeed, I think that by retirement, whenever it eventually came, Mr E could have been in a very agreeable position. On one hand he'd have an existing deferred DB scheme of considerable value. This would contain all the guarantees and benefits that such schemes normally bring which tend to include a promise to pay a known pension for life. Significant indexation guarantees also existed within BSPS2 and the scheme was still underpinned by the PPF. On the other hand, he'd have also built up a substantial DC scheme over a long period of time – up to 25 years. So, if Mr E ever found he needed so-called flexibility, then he'd be able to use the latter, rather than transferring away from the former.

I've also seen no evidence that Mr E had either the capacity or desire to exercise control over his funds. With his DB scheme, Mr E was being offered the opportunity to transfer to the new BSPS2. It's true there were some differences in this scheme when compared to the original BSPS, but it remained a DB scheme nonetheless and was run for him by trustees. Mr E himself had no experience of these types of 'money market' investments. I accept that he may have had a basic understanding of pensions and he also had his new DC pension with TATA. But I've seen nothing showing the investment strategy for this pension was anything other than an 'off the shelf' mix of investments commonly found in most company DC schemes. So, I think he would have found the complexity, scale and responsibility of managing over £277,000 of transferred funds to be onerous in the years ahead.

What I've seen tends to show Mr E would have required ongoing financial advice and support, all of which would cost him money which his DB scheme didn't require from him.

David Stock itself set out the estimated pension he'd get under the BSPS. In my view, this showed a reasonable income in retirement. Of course, I've already explained the unpredictability of assessing retirement needs so far in advance and at such a relatively young age. Mr E might have even speculated that he might need a certain amount of annual pension when he retired, cited in 'todays' money. However, in my view this could only ever be guesswork because retirement was decades away for Mr E. He had a pre-school child. He had a mortgage with years left to run and what looked like normal household debts to pay down. Mr E, in my view, could also realistically be said only to be in 'mid-career' and it looks to me as if Mrs E had a career which was important to her too. In short, he and Mrs E still had their whole lives ahead of them. So, there's simply no reason for me to address any estimated retirement income in these circumstances because this was all so far away and transferring was very clearly unsuitable whilst still both in their 30s. No-one could predict what their retirement would look like.

I therefore think Mr E's circumstances here were much more aligned to him transferring to BSPS2 and retiring from that when he felt he was ready to do so. All the evidence pointed to him being able to build a pathway in the years ahead to retiring earlier than 65 if he felt he really needed to. There would have been an actuarial reduction involved, depending on his age at the time. And because Mr E had another pension too, there was the capacity for him to increase contributions to this new DC scheme.

Death benefits

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 BSPS2 contained certain benefits payable to a spouse and children if Mr E died. Mr E was married and had children so I think the value of these benefits were most likely underplayed because the spouse's pension provided by the BSPS2 would have been useful to Mrs E if he predeceased her. I don't think David Stock made the value of this benefit clear enough. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was.

I think the adviser told Mr E that he'd be able to pass on the value of a personal pension, potentially tax-free, to anyone he nominated and that a DB pension was more restrictive in this regard. So, the lump sum death benefits on offer through a personal pension was probably made to look like an attractive feature to Mr E.

But whilst I appreciate death benefits are important to consumers, and Mr E might have thought it was a good idea to transfer the BSPS to a personal pension because of this, the priority here was to advise him about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think David Stock explored to what extent Mr E was prepared to accept a different retirement income in exchange for different death benefits.

Mr E was only 39 and in good health. An obvious drawback with a personal plan's death benefits is that the amount left to pass on – to anyone – may be substantially reduced as the pensioner starts to withdraw his or her retirement income. To this end, if Mr E had lived a long life there could be nothing left at all in his personal pension plan.

Although I've questioned the ability to forecast an early retirement whilst still so young, there's no real doubt that retiring at 57 -to-60 was at least mentioned. The adviser should have therefore additionally known that a healthy male retiring at 57 would likely have many years ahead in which he would be drawing down his pension funds thus leaving very little left to pass on to someone.

I think life insurance was probably discussed although I can't say to what extent. But at 39 years old, a 'term' life insurance policy would have been a reasonably affordable product if Mr E really did want to leave a large lump sum legacy, rather than an annual pension, for a specific relative or someone other than a spouse. But more so, it doesn't appear that David Stock took into account the fact that Mr E could have nominated a beneficiary of any funds remaining in his other DC scheme. It's easy to dismiss this because at the time this had only really just started. But this would have seen decades of contributions in the times ahead. So, to this end, Mr E already had plenty of options ensuring part of his pension wouldn't 'die with him'. There was no need to transfer.

Overall, in this case I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr E. I think this objective, listed as it was in the suitability report, was no more than a generic comment and not meaningful to Mr E's situation.

Concerns over financial stability of the DB scheme

It's clear that Mr E, like many employees of his company, was concerned about his pension. His employer had recently made the announcement about its plans for the scheme and David Stock said he lacked trust in the company. He'd heard negative things about the PPF and David Stock said he could have more control over his pension fund.

So, it's quite possible that Mr E was also leaning towards the decision to transfer because of the concerns he had about his employer and a negative perception of the PPF. However, it was David Stock's obligation to give Mr E an objective picture and recommend what was in his best interests.

By the point of the advice being delivered details of BSPS2 were known and it seemed likely it was going ahead. So, I think this should have alleviated any concerns about the scheme moving to the PPF.

However, even if there was a chance the BSPS2 wouldn't go ahead, I think that David Stock should have reassured Mr E that the scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr E through the PPF would have still probably provided a significant portion of the income he would have needed at retirement, and he was still unlikely to be able to exceed this by transferring out, given his ATR and the effect of pension charges and fees. And although the increases in payment in the PPF were lower, the income was still guaranteed and was not subject to any investment risk. So, I don't think that these concerns should have led to David Stock's recommendation to Mr E to transfer out of the DB scheme altogether.

Use of a DFM and suitability of investments

David Stock recommended that Mr E invest his funds in a personal pension and use a DFM to manage them. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr E and I don't think he would've insisted on transferring out of the scheme if clear advice had been given to him, it follows that I don't need to consider the suitability of the investment recommendation. This is because he should have been advised to remain in the DB scheme and so the investment in the new funds wouldn't have arisen if suitable advice had been given.

Summary

I don't think the advice given to Mr E was suitable.

He was giving up a guaranteed, risk-free and increasing income within the BSPS2. By transferring to a personal pension, the evidence shows Mr E was likely to obtain lower retirement benefits. And I don't think there were any other particular reasons which would justify the transfer and outweigh this.

I don't think it was in Mr E's best interests for him to transfer his DB scheme to a personal pension when he had the opportunity of opting into the BSPS2. On this basis, I think David Stock should have advised Mr E to opt into the BSPS2.

I think it was clear to all parties that the BSPS2 was likely to be going ahead. Mr E still had many more years before he intended to retire and it was far too early to predict what his retirement might look like. I don't think that it would have been in his interest to accept the reduction in benefits he would have faced by the scheme entering the PPF, as it wouldn't be offset by the more favourable reduction for very early retirement. But by opting into the BSPS2, Mr E would have retained the ability to transfer out of the scheme nearer to his retirement age if he needed to. The annual indexation of his pension when in payment was also more advantageous under the BSPS2.

I have considered, given the circumstances of the time, whether Mr E would have transferred to a personal pension in any event. David Stock did raise this point. I accept that David Stock disclosed some of the risks of transferring to Mr E, and provided him with a certain amount of information. But ultimately it advised Mr E to transfer out, and I think Mr E relied on that advice.

I'm not persuaded that Mr E would have insisted on transferring out of the DB scheme, against David Stock's advice. I say this because Mr E was likely an inexperienced investor and this pension accounted for virtually all of his retirement provision at the time. So, if David Stock had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would have accepted that advice.

Finally, David Stock should have known that a higher CETV wasn't a prominent reason to transfer, especially in someone so far off retirement.

In light of the above, I think David Stock should compensate Mr E for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Putting things right

A fair and reasonable outcome would be for the business to put Mr E, as far as possible, into the position he would now be in but for David Stock's unsuitable advice. I consider Mr E would have most likely opted to join the BSPS2, rather than transfer to the personal pension if he'd been given suitable advice and compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance. David Stock should use the benefits offered by BSPS2 for comparison purposes.

David Stock must therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement PS22/13 and set out in the regulator's handbook in DISP App 4:
https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter.

David Stock should use the FCA's BSPS-specific redress calculator to calculate the redress. A copy of the BSPS calculator output should be sent to Mr E and our Service upon completion of the calculation.

This calculation should be carried out using the most recent financial assumptions in line with DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr E's acceptance of my final decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, David Stock should:

- calculate and offer Mr E redress as a cash lump sum payment,
- explain to Mr E before starting the redress calculation that:
    - the redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
    - a straightforward way to invest the redress prudently is to use it to augment the DC pension
- offer to calculate how much of any redress Mr E receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr E accepts David Stock's offer to calculate how much of the redress could be augmented, request the necessary information and not charge Mr E for the calculation, even if he ultimately decides not to have any of the redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr E's end of year tax position.

Redress paid to Mr E as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, David Stock may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr E's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

Our investigator recommended that David Stock should pay Mr E for the distress and inconvenience caused by the unsuitable advice. I have considered the impact this would likely have had on Mr E in his particular circumstances. This pension at the time represented most of his retirement provision. In his situation I think the thought of losing material benefits would have impacted upon Mr E. So I agree the recommended payment of £300 for distress and inconvenience. David Stock should pay Mr E this amount in addition to the redress I've set out above.

Where I uphold a complaint, I can award fair compensation of up to £170,000, 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 £170,000, I may recommend that the business pays the balance.

My final decision

Determination and money award: I am upholding this complaint and I now direct David Stock & Co Limited to pay Mr E the compensation amount as set out in the steps above, up to a maximum of £170,000.

Recommendation: If the compensation amount exceeds £170,000, I also recommend that David Stock & Co Limited pays Mr E the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr E.

If Mr E accepts my final decision, the money award becomes binding on David Stock & Co Limited.

My recommendation would not be binding. Further, it's unlikely that Mr E can accept my decision and go to court to ask for the balance. Mr E 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 E to accept or reject my decision before 17 November 2023.

Michael Campbell
Ombudsman