DRN-3864766

The complaint

Mr H complains about the advice given by David Stock & Co Limited ('DSCL') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme with British Steel ('BSPS') to a personal pension arrangement. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

In March 2016, Mr H'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'). The PPF acts as a 'lifeboat' for insolvent DB pension schemes, paying compensation to members of eligible schemes for their lifetime. The compensation levels are, generally, around 90% of the level of the original scheme's benefits for deferred pensions. But the PPF's rules and benefits may differ from the original scheme. Alternatively, members of the BSPS were informed they could transfer their benefits to a private pension arrangement.

In May 2017, the PPF made the announcement that the terms of a Regulated Apportionment Arrangement (RAA) had been agreed. That announcement included that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr H's employer would be set up – the BSPS2. The RAA was signed and confirmed in August 2017 and the agreed steps were carried out shortly after.

In October 2017, members of the BSPS were sent a "time to choose" letter which gave them the options to either stay in the BSPS and move with it to the PPF, move to the BSPS2 or transfer their BSPS benefits elsewhere.

Mr H was concerned about what the recent announcement from his employer meant for the security of his pension so in November 2017 he approached DSCL for advice. At DSCL's request, Mr H completed a one page 'initial questionnaire' dated 17 November 2017 with basic personal information and what his transfer value was. DSCL then prepared a transfer value analysis report ('TVAS') and an 'initial report' for Mr H dated 23 November 2017.

Mr H then met with DSCL on 14 December 2017 and it completed a financial planning questionnaire with him to gather information about his circumstances and objectives.

This recorded that he was 28; he was married with one dependent child; he worked full-time; his income wasn't recorded; he had an outstanding mortgage on his home; no other assets or liabilities were recorded; and he wanted advice because he felt let down and didn't want to go into the new BSPS2, and he wanted to protect his family in the event of his death. DSCL also carried out an assessment of Mr H's attitude to risk, which it deemed to be 'cautious to moderate' – the fourth risk category on a scale of one to ten.

During the meeting of 14 December 2017, it seems DSCL also discussed its 'initial report' with Mr H. The report said that the critical yield was potentially acceptable to someone with an attitude to risk score of '5' and that it had assumed for the purposes of the report that Mr H's attitude to risk was 'moderate / balanced'. It said Mr H's desire to transfer was based on the enhanced cash equivalent transfer value ('CETV') of his DB scheme benefits and that he wanted control of this significant amount of money. Reference was made to wanting to look after his family in the event of his death and it said he thought the BSPS2 could eventually fall into the PPF. It said if Mr H was confident he understood the risks involved in transferring, then DSCL could help him select investment funds and the next step was to complete the necessary forms. It said his transferred DB funds would initially be held in a cash-based fund until a full investment portfolio had been agreed.

On the same day, Mr H signed the necessary forms. He also signed to confirm DSCL had fully advised him about transferring from a DB scheme to an alternative pension provider, that he understood the risks and he wanted greater security for him and his family through having control of his DB scheme benefits and he wouldn't hold DSCL liable for any loss he might incur because of his decision to transfer.

DSCL prepared a 'client agreement' document that said it would, with *"very few exceptions",* confirm to Mr H in writing the basis of its recommendations. The *'Financial Review and Recommendation'* and other sections of this agreement were crossed out with a note saying, *"Refer to Initial Report 23-11-17".* DSCL hasn't provided a copy of any further suitability report.

Sometime later, an amount of around £113,500 was transferred to Mr H's new personal pension plan.

Mr H complained to DSCL in 2022 about the suitability of the transfer advice. He said he'd received a letter from the Financial Conduct Authority ('FCA') telling him about concerns it had about the advice given by some firms to British Steel employees to transfer their DB pensions. Mr H asked DSCL to review the advice he received.

DSCL didn't uphold Mr H's complaint. It provided a 16-page response letter. I haven't set this all out here. But in summary it said it had followed the regulator's requirements and guidance, carried out a thorough advice process including understanding Mr H's circumstances and objectives and explained the risks so Mr H was able to make an informed decision about the recommendation to transfer. It said the adviser recommended in writing that Mr H should transfer to a personal pension arrangement. It said *"The recommendation was clear. [the adviser] did not indicate in his report that you should not transfer but implied you should transfer."*

Dissatisfied with its response Mr H referred to his complaint to us. One of our Investigator's upheld it and required DSCL to pay compensation. They thought the advice was unsuitable. They said Mr H was likely to be worse off in retirement as a result of transferring. They said there was nothing to indicate Mr H wanted control of his pension – he was so far from retirement that he didn't know what his retirement might look like and in any event the investment decisions were handed to a discretionary fund manager. And they said death benefits wasn't a suitable reason to transfer.

The Investigator also commented on the advice process DSCL employed in its interaction with Mr H. They said there was no suitability letter as such in which DSCL set out its recommendation. They said that, while DSCL said that it '*generally dissuaded'* Mr H from transferring and that it did not '*...overtly recommend a transfer...'* because they thought Mr H had made it clear he was seeking advice on the best course of action for him, DSCL should've gone further and recommended that he remain in the DB scheme. They said if things had happened as they should have, Mr H would've opted to join the BSPS2.

DSCL disagreed and asked for the matter to be passed to an Ombudsman. It didn't provide any further submissions.

The complaint was therefore subsequently referred 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 Businesses ('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 DSCL'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.

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

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for largely the same reasons given by the investigator. My reasons are set out below.

- Firstly, I think the advice process DSCL employed in its dealings with Mr H was somewhat unorthodox.
  It was neither a conventional advisory process where a suitability report was issued setting out an explicit recommendation to transfer (or not to transfer), which was accepted and actioned, nor was it an insistent client process where Mr H proceeded against a recommendation not to transfer his pension. Instead, what appears to have happened is that DSCL provided him with general information about the pro and cons of transferring, produced a TVAS report, obtained his willingness to accept the associated risks involved in transferring to an alternative arrangement and then facilitated the transfer. But I'm persuaded that, based on what I've seen, its actions can reasonably be construed as making a recommendation to Mr H. DSCL has itself

accepted this – it says it actions in facilitating the transfer could be construed as a recommendation - and importantly I think it is likely Mr H believed he received a recommendation to transfer. It is clearly documented that Mr H sought advice from DSCL about whether to transfer his pension, and DSCL ultimately facilitated the transfer. As such I'm treating this matter as DSCL having recommended that Mr H transfer his BSPS benefits to a personal pension arrangement.

- The transfer value analysis ('TVAS') report, that DSCL was required to carry out by the regulator, said that the critical yield - how much Mr H's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme – was 4.48% to match the full pension he'd have been entitled to under the scheme at age 65 (the lowest of three yields provided for different destination pension providers.) No figures was produced to match the maximum tax-free cash and reduced pension the scheme would provide at that age. To match the full pension the PPF would've paid from 65 the critical yield was 3.92% and to match the tax-free cash and reduced pension the PPF would've offered, it was 3.73%.

- Despite the fact it was known by the point DSCL instructed the TVAS that continuing in the BSPS in its existing form wasn't an option for Mr H, and despite reference to the BSPS2 being made in the initial report of 23 November 2017, the analysis appears to be based on the BSPS benefits and not the BSPS2, even though details were available. I think it should've done. In any event, given what we know about the BSPS2, I think the critical yields to match the benefits the BSPS2 would've provided from age 65 were likely to be between those of the BSPS and the PPF.

- DSCL assumed for the purposes of its initial report that Mr H was a 'moderate / balanced' risk investor and that in its view the critical yield was acceptable for someone with this level of risk. But DSCL's subsequent assessment of Mr H's attitude to risk was lower – it assessed him as a 'cautious to moderate' risk investor. So, given Mr H's recorded attitude to risk, the discount rate of 4.7% for 36 years to retirement and the regulator's middle projection rate, I think at best the opportunity to improve on the benefits available to Mr H at 65 under the BSPS2 was limited as a result of transferring and investing in line with that attitude to risk.

- The critical yields were lower to match the benefits under the PPF and there might have been scope for a transfer to be financially viable if the scheme moved to the PPF. But, given Mr H's broader circumstances – the fact he was only 28 years old, he had no real idea what his retirement would look like in 30 or more years' time or what income he might need, coupled with the fact that there was no other compelling reason to justify a transfer at this stage as I will explain below, I don't think it was in Mr H's best interests give up his guaranteed benefits at this time.

- DSCL recorded that Mr H wanted to protect the whole of his family and he wanted to ensure this was possible – he didn't think under the BSPS2 there would be much to pass on.
  But the priority here was to advise Mr H about what was best for his retirement. And the existing scheme offered death benefits, by way of a spouse's pension, that could've been valuable to his family in the event of his death.

- While the CETV figure would no doubt have appeared attractive as a potential lump sum, the sum remaining on death following a transfer was always likely to be different. As well as being dependent on investment performance, it would've also been reduced by any income Mr H drew in his lifetime. And so may not have provided the legacy that Mr H may have thought it would.

- If Mr H had wanted to leave a legacy for his family, DSCL could've explored life insurance as an alternative. Mr H was young and so I think it's likely the premiums were affordable. And this could've been considered on a whole of life or term assurance basis – which was likely to be cheaper. But there's little evidence DSCL did so.

- Overall, I don't think different death benefits available through a transfer justified the likely decrease of retirement benefits for Mr H. I don't think that insurance was properly explored as an alternative. And ultimately DSCL should not have encouraged Mr H to prioritise the potential for alternative death benefits through a personal pension over his security in retirement.

- DSCL recorded that Mr H wanted control over what he considered was a significant sum of money. But I think Mr H's desire for control over pension was overstated. I can't see that he had an interest in or the knowledge to be able to manage his pension funds on his own. Indeed the investment recommendation made utilised the services of a discretionary fund manager who would make all of the investment decision for him. So, I don't think that this was a genuine objective for Mr H – it was simply a consequence of transferring away from his DB scheme.

- Mr H may have legitimately held concerns about how his employer had handled his pension and the prospect of entering the PPF. But it was DSCL's role to objectively address those concerns. At the time of the advice, all signs pointed toward the BSPS2 being established. But even if not, the PPF still provided Mr H with guaranteed income and the option of accessing tax-free cash. Mr H was unlikely to improve on these benefits by transferring. So, entering the PPF was not as concerning as he might've thought, and I don't think any concerns he held about this meant that transferring was in his best interest.

Overall, I can't see persuasive reasons why it was clearly in Mr H's best interest to give up his DB benefits and transfer them to a personal pension at this time, particularly given Mr H's young age and his inability therefore to know what his future retirement and income needs would be. And I also haven't seen anything to persuade me that Mr H would've insisted on transferring, against advice to remain in the DB scheme. DSCL has said that Mr H was advised to transfer by a union representative. But I've seen nothing to support this – in any event, they would not have been qualified or indeed authorised by the industry regulator to provide that kind of advice. Mr H had little to no investment knowledge or experience and nothing suggests to me that he had the requisite confidence or skill to go against the advice he was given. I think Mr H was concerned about what he should do in light of the recent announcements made by his employer and he wanted professional advice on the matter – advice that I think he solely relied upon. So, I'm upholding the complaint as I think the advice Mr H received from DSCL was unsuitable for him.

Putting things right

A fair and reasonable outcome would be for DSCL to put Mr H, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr H would most likely have remained in the occupational pension scheme and opted to join the BSPS2 if suitable advice had been given. He had no retirement plans and the BSPS2 would've given him the ability to transfer out in the future, if his needs later demanded it.

DSCL 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.

DSCL 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 H and the Financial Ombudsman Service upon completion of the calculation together with supporting evidence of what DSCL based the inputs into the calculator on.

For clarity, Mr H has not yet retired, and he has no plans to do so at present. So, compensation should be based on the scheme's normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

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 H'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, DSCL should:

- calculate and offer Mr H redress as a cash lump sum payment,
- explain to Mr H before starting the redress calculation that:
    - their 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 their redress prudently is to use it to augment their DC pension
- offer to calculate how much of any redress Mr H receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr H accepts DSCL's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr H for the calculation, even if he ultimately decides not to have any of their redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr H's end of year tax position.

Redress paid to Mr H as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, DSCL 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 H'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.

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 uphold this complaint and require David Stock & Co Limited to pay Mr H the compensation amount as set out in the steps above, up to a maximum of £170,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that David Stock & Co Limited pays Mr H the balance.

If Mr H accepts this decision, the money award becomes binding on David Stock & Co Limited.

My recommendation would not be binding. Further, it's unlikely that Mr H can accept my decision and go to court to ask for the balance. Mr H 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 H to accept or reject my decision before 20 November 2023.
Paul Featherstone
Ombudsman