DRN-3864768

The complaint

As we've had this complaint for a while, I'm going to maintain consistency by referring to the consumer as "Mrs E" although I know her circumstances have since changed.

Mrs E complained that she was given unsuitable advice to transfer her 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 the business as "David Stock".

What happened

In March 2016, Mrs 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 Mrs 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).

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

- Mrs E was 46 years old and married (although separated). She was described as being in good health and at the time. She had one dependent child.

- The cash equivalent transfer value (CETV) of Mrs E's BSPS was approximately £326,058. The normal retirement age (NRA) was 65.

- Mrs E had joined the new TATA defined contribution (DC) pension scheme as a consequence of the BSPS ceasing new contributions. This pension isn't the subject of any complaint.

- Mrs E's salary upon the closing of the original BSPS had been around £34,000. She had around £12,000 in savings.

It seems David Stock had a number of advice sessions with Mrs E throughout the autumn of 2017 until her pension was eventually transferred in 2018. The business set out its advice initially in a suitability report on 1 December 2017. There were discussions about the types of investments she might move her funds into. Ultimately, David Stock recommended that Mrs E transfer away to a personal pension and use a discretionary fund manager (DFM) to manage her funds and fund selection in the future. David Stock said this would allow Mrs E to achieve her objectives. Mrs E accepted this advice and so transferred out. In 2022 Mrs E complained to David Stock about its advice, saying she shouldn't have been advised to transfer out to a personal pension.

Mrs E then referred her 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 Mrs 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 Mrs 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 Mrs 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 Mrs 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 Mrs 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 4.57% if Mrs E took a pension without a tax-free lump sum. It's not entirely clear to me if this was benchmarked against the BSPS or the 'new' BSPS2. But I think the BSPS2 critical yield would have been relatively close to the BSPS yield.

I have noted that David Stock didn't calculate a critical yield rate for an earlier retirement, despite it mentioning an early retirement age of 55 for Mrs E. As this was mentioned, I've taken this to mean that the concept of an early retirement was discussed with her. However, as I'll explain more about later, retirement was still a long way off for Mrs E and so I very much doubt whether retiring early, which is what was recorded, was anything more than something she just aspired to rather than being part of a real plan. However, as I'll say more about below, David Stock seems to now place 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 55, would have been. But in my experience it would probably have been higher than the one mentioned above. So, I think the failure to provide critical yield rates for retirement ages of around 55 were significant failures. This type of information should have been shown to Mrs E as this would have given her a much clearer picture and better information with which she 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 4.4% per year for just over 18 years to retirement (age 65). If considering an early retirement, at the age of 55, the discount rate was only 3.5% (over 8 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%. I've seen there were quite similar growth assumptions from the fund provider which was being considered. For example, its low-end growth assumption was also 2% and the medium rate was 5%.

At the time, David Stock assessed Mrs E's attitude to risk (ATR) as "moderate". However, I think Mrs E was a very inexperienced investor. There's nothing at all showing she owned any shares at the time and there's some reliable documentary evidence that she never had. She also clearly didn't want to accept much investment risk. Although she held £12,000 in savings, it looks to me as if this was in a cash deposit account which I think helps demonstrate her general cautious approach to money. I've therefore seen nothing showing that Mrs E had any investment experience at all to draw upon. So, when thinking about investing this amount of money, I don't think the adviser categorised Mrs E's ATR correctly. Overall, David Stock's assessment of her financial circumstances and wealth seems very weak indeed to me as when the recommendation to transfer came, very few references were made to her particular circumstances. In short, I think the advice was somewhat generic and not personalised enough.

Against this backdrop I think the ATR, if correctly applied, was more likely to be a "low" rating. Mrs E may well have answered some generic questions about risk on a pre-formatted form, but the adviser's role was to interpret this together with Mrs E's real-life situation. I therefore think any reasonable risk assessment of Mrs E – a person with absolutely no investment experience or history and who was also going through some relationship changes at the time - should have been applied in a much more cautious manner.

These failures by David Stock still wouldn't have changed anything because even someone with a moderate ATR shouldn't have been advised to transfer away in these circumstances. However, with the above in mind, I don't think the adviser had enough information or evidence to recommend transferring away from a DB scheme based on a financial comparison basis. I say this because 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 2 -to- 4½% were realistic here.

This was below the critical yield figure for retiring at 65, which was the only critical yield (other than for the PPF) that David Stock published. This was likely below a similar scenario if retiring at the age of 55. And because David Stock failed to show Mrs E these different critical yield rates in its analysis, there is certainly no clear evidence that by transferring away Mrs E would 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 Mrs E, would have further reduced the likely growth. Mrs 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 and indeed significant costs that I think Mrs E would have found very difficult to work out. With a DB scheme she didn't have these costs. So, I think all this showed there would be a very real 'drag' on future performance if she transferred. To even match the published critical yield rate as set out above, Mrs E's investments would need to exceed growth rates that were reasonable, given the economic conditions of the time and her true ATR. So overall, I think that achieving the stated and 'unstated' critical yield(s), year-on-year, upon transferring out, was unlikely. David Stock did not highlight these issues enough in the advice.

In my view, there would be little point in irreversibly transferring away from a DB scheme at the age of 46 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 Mrs 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 £429,613. 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 Mrs E's CETV, it represents, in my view, a revealing window into the value of the guaranteed pension Mrs 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 Mrs E would have wanted to transfer to this scheme. Again, there were no critical yields for retiring earlier (in the PPF) and I reiterate that the effect of charges and fees associated with a personal pension such as the one being recommended to Mrs 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 Mrs 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 she transferred out to a personal plan, the funds could last Mrs E well into her retirement. I think most of these were based on growth projections which were based on past performance and they ran out at certain ages. It's also fair to say these were not comparing like-with-like. What David Stock was showing Mrs E were comparisons with plans which lacked the guarantees and benefits of a DB scheme.

Of course, according to David Stock, its recommendation that she should transfer out to a personal pension was not wholly based on the financial comparisons with her current scheme options alone. Rather, David Stock said Mrs 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 her, despite providing the overall lower benefits mentioned earlier.

<u>*Other reasons to transfer*</u>

David Stock recommended and transacted a transfer to a personal pension plan based on wider objectives, not just on financial comparison grounds. I have used all the documents we still have from the advice sessions to summarise the following themes as apparently supporting the recommendation to transfer away.

However, I think the suitability report was a poor document. In my view, it lacked clarity; it was generic and not specific to Mrs E. And the overall transfer-away rationale just wasn't brought out in to the open in a clear way. This was the adviser's opportunity to set out clearly what the options were and the rationale behind any recommendations that were being made.

I should also make clear that it was David Stock that was the regulated party here and Mrs E was being substantially charged for its advice. So, the adviser wasn't just there to transact what Mrs E – an inexperienced amateur – thought might have been a good idea. The adviser's role was to fully examine her situation and provide advice that was in the client's best interests.

Nevertheless, I've drawn out the following themes as being significant in the overall recommendation for Mrs E to transfer to a personal pension arrangement.

- There were discussions about retiring early. The report said her early retirement age was 55.

- By transferring, she could have greater flexibility and control over her pension.

- The financial security of the DB scheme(s) on offer.

- David Stock implied that 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 think it's important to focus for a moment here on Mrs E's relatively young age by pension standards. The evidence I've seen here is that Mrs E had no concrete plans whatsoever for her retirement yet. With over 18 years still left to when she'd be actually contemplating retiring if using her NRA, there's simply no way that what she might possibly use the money for, or how much she thought she might need, should have been major influences in her 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, Mrs E probably wanted to stop working as early as possible, I think what she and the adviser discussed could only ever have been general retirement aspirations on her part. In reality, there was no plan to retire early. It was simply far too early to speculate about this given her age and the circumstances she was in at the time.

I also think David Stock's dealings with this issue are contradictory. To a 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. But 55 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 55 really was a retirement age being considered here, then the critical yields for that age should have been published and there ought to have been a clear pathway explaining how such an early retirement was possible.

These things were not present in this case.

Flexibility

I also can't see that Mrs 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 Mrs E required changing how her retirement benefits ought to be paid. I don't think this could have been predicted whilst still so far away from retirement age. She already had a new and more flexible DC pension with the new TATA DC fund. This was being contributed towards by both Mrs E and her employer and still had up to 18 years left to run (over 8 years if she did eventually retire very early). So, this other pension would have afforded Mrs E any flexibility she might have needed in the years ahead.

As for the evidence / rationale of transferring at all, I think the suitability report was very unclear. It even said at one point that *"our reaction is to generally dissuade people from transferring…"*. I take this to mean that the adviser themselves had some reservations – but they went on, nonetheless, to recommend that Mrs E ought to transfer to a specific product overseen by a DFM.

However, I've seen nothing explaining why Mrs 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, Mrs E could have been in a very agreeable position. On one hand she'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, she'd have also built up a substantial DC scheme over a long period of time – up to 18 years. So, if Mrs E ever found she needed any flexibility, then she'd be able to use the latter, rather than transferring away from the former.

I've also seen no evidence that Mrs E had either the capacity or desire to exercise control over her funds. With her DB scheme, Mrs 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 her by trustees. Mrs E herself had no experience of these types of 'money market' investments. I accept that she may have had a basic understanding of pensions and she also had her 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 she would have found the complexity, scale and responsibility of managing over £326,000 of transferred funds to be onerous in the years ahead.

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

David Stock itself set out the estimated pension she'd get under the BSPS. In my view, this showed a reasonable income in retirement of £19,203 per year. Of course, I've already explained the unpredictability of assessing retirement needs so far in advance and at such a relatively young age by pension standards. But there was certainly no analysis showing this wouldn't have met her needs by the time she had reached retirement.

In my view, this was another significant failure by the adviser because they were advising Mrs E to transfer without first determining if it was even necessary.

Mrs E might have even speculated that she might need a certain amount of annual pension when she retired, cited in 'todays' money. However, in my view this could only ever be guesswork because retirement was still years away for Mrs E. She had a school age child and she was quite obviously embarking on a new direction in life. It's fair to say she would have faced normal household debts and bills in the years ahead. Mrs E, in my view, probably still had career aspirations which were important to her in the coming years.

I therefore think Mrs E's circumstances here were much more aligned to her transferring to BSPS2 and retiring from that when she felt she was ready to do so and her plans were much clearer. All the evidence pointed to her being able to build a pathway in the years ahead to retiring earlier than 65 if she felt she really needed to. There would have been an actuarial reduction involved, depending on her age at the time. And because Mrs E had another pension too, there was the capacity for her 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 Mrs E died. Mrs E was still legally married although separated. The adviser didn't really record enough details about this situation and what her plans were. But I think this area was important.

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 a future spouse if Mrs E had gone onto divorce and then marry again. I accept that predicting this is uncertain – perhaps even for Mrs E at the time – but the issue here is that the adviser failed to properly assess this situation. At the age of only 46, I'd say it was entirely reasonable to say that Mrs E could re-marry in the future. And this would then make a spouse's pension highly relevant again if she predeceased her husband. In any event, there were still some child-related death benefits which I think would have been of use to Mrs E's child if something unexpected had happened. I don't think David Stock made the value of this benefit clear enough. These death benefits were guaranteed and they escalated – they were not dependent on investment performance, whereas the sum remaining on death in a personal pension was.

I think the adviser probably told Mrs E that she'd be able to pass on the value of a personal pension, potentially tax-free, to anyone she 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 Mrs E. But whilst I appreciate death benefits are important to consumers, and Mrs 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 her about what was best for her retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think David Stock explored to what extent Mrs E was prepared to accept a different retirement income in exchange for different death benefits.

Mrs E was only 46 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 her retirement income. To this end, if Mrs E had lived a long life there could be nothing left at all in her 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 55 was at least mentioned. The adviser should have therefore additionally known that a healthy female retiring at 55 would likely have many years ahead in which she would be drawing down her pension funds thus leaving very little left to pass on to someone.

I can't say to what extent life insurance might have been discussed. But at 46 years old, a 'term' life insurance policy would have been a reasonably affordable product if Mrs 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 Mrs E could have nominated a beneficiary of any funds remaining in her other DC scheme. It's easy to dismiss this because at the time this had only really just started. But this would have seen many years of contributions in the times ahead. So, to this end, Mrs E already had plenty of options ensuring part of her pension wouldn't 'die with her'. 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 Mrs E. I think this objective, listed as it was in the suitability report, was no more than a generic comment and not meaningful to Mrs E's situation.

Concerns over financial stability of the DB scheme

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

So, it's quite possible that Mrs E was also leaning towards the decision to transfer because of the concerns she had about her employer and a negative perception of the PPF. However, it was David Stock's obligation to give Mrs E an objective picture and recommend what was in her 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 Mrs E that the scheme moving to the PPF wasn't as concerning as she thought. The income available to Mrs E through the PPF would have still probably provided a significant portion of the income she would have needed at retirement, and she was still unlikely to be able to exceed this by transferring out, given her 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 Mrs E to transfer out of the DB scheme altogether.

Use of a DFM and suitability of investments

David Stock recommended that Mrs E invest her 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 Mrs E and I don't think she would've insisted on transferring out of the scheme if clear advice had been given to her, it follows that I don't need to consider the suitability of the investment recommendation. This is because she 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 Mrs E was suitable.

She was giving up a guaranteed, risk-free and increasing income within the BSPS2. By transferring to a personal pension, the evidence shows Mrs 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 Mrs E's best interests for her to transfer her DB scheme to a personal pension when she had the opportunity of opting into the BSPS2. On this basis, I think David Stock should have advised Mrs E to opt into the BSPS2.

I think it was clear to all parties that the BSPS2 was likely to be going ahead. Mrs E still had many more years before she intended to retire and it was far too early to predict what her retirement might look like. I don't think that it would have been in her interest to accept the reduction in benefits she 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, Mrs E would have retained the ability to transfer out of the scheme nearer to her retirement age if she needed to. The annual indexation of her pension when in payment was also more advantageous under the BSPS2.

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

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

In light of the above, I think David Stock should compensate Mrs 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 Mrs E, as far as possible, into the position she would now be in but for David Stock's unsuitable advice. I consider Mrs E would have most likely opted to join the BSPS2, rather than transfer to the personal pension if she'd been given suitable advice and compensation should be based on her 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 Mrs 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 Mrs 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 Mrs E redress as a cash lump sum payment,
- explain to Mrs 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 Mrs E receives could be augmented rather than receiving it all as a cash lump sum,
- if Mrs E accepts David Stock's offer to calculate how much of the redress could be augmented, request the necessary information and not charge Mrs E for the calculation, even if she 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 Mrs E's end of year tax position.

Redress paid to Mrs 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 Mrs 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 Mrs E for the distress and inconvenience caused by the unsuitable advice. I have considered the impact this would likely have had on Mrs E in her particular circumstances. This pension at the time represented all of her retirement provision and it was a large pension. Mrs E had entered her mid-40s and although this was still too young to be transferring, I do think the thought of losing material benefits in her situation would have impacted heavily upon Mrs E. So I agree to an additional payment for this but am upgrading the recommended payment of £200 for distress and inconvenience to £300 as this is consistent with other decisions I have recently made and also the specific situation faced by Mrs E. David Stock should pay Mrs E this amount, £300, *in addition* to the redress I've set out below.

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

<u>Determination and money award</u>: I am upholding this complaint and I now direct David Stock & Co Limited to pay Mrs 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 Mrs E the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mrs E.

If Mrs 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 Mrs E can accept my decision and go to court to ask for the balance. Mrs 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 Mrs E to accept or reject my decision before 23 November 2023.

Michael Campbell
Ombudsman