

## The complaint

Mr C complains about the advice given by D C Financial Limited ('DCF') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a self-invested personal pension ('SIPP'). He says the advice was unsuitable for him and believes this has caused a financial loss.

## What happened

In March 2016, Mr C's employer announced that it would be examining options to restructure its business, including decoupling the BSPS (the employers' DB scheme) from the company. The consultation with members referred to possible outcomes regarding their preserved benefits which included transferring the scheme to the Pension Protection Fund ('PPF'), or a new defined-benefit scheme ('BSPS2'). Alternatively, members were informed they could transfer their benefits to a private pension arrangement.

At the time the BSPS scheme closed to new accruals in March 2017, Mr C had 9 years and 6 months of pensionable service with his employer which gave him a total (index linked) pension of £4,889.52 per year (forecast to be £11,547 per year at age 65 or £6,314 at age 55). After the DB scheme closed to new accruals in March 2017, Mr C joined his employer's Defined Contribution ('DC') scheme.

In September 2017 Mr C had received a Cash Equivalent Transfer Value ('CETV') from the DB scheme of £111,387.09 valid for 3 months.

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 C was unsure about what to do so he contacted DCF. DCF completed a fact-find in November 2017 to gather information about Mr C's circumstances and objectives. Mr C's circumstances at the time were noted as follows:

- He was aged 29, married with no dependents.
- He was employed as an engineer earning £39,000 per year including bonuses. No income information for Mr C's wife was documented.
- Mr C had outgoings of £1,500 per month and a surplus monthly income of £300.
- His house was valued at £200,000 with an outstanding mortgage of £95,000 with 25 years to run.
- He had £16,000 saved in an ISA and £2,000 set aside for emergencies. He had no other savings or investments.
- He was recorded as being a member of his employer's DC scheme, making contributions of £180 gross per month with his employer contributing £280 gross per month; the fund was valued at approximately £3,000.
- He had a life insurance policy – the amount of cover was undocumented – along with death in service cover from his employer of four times his salary.

- His preferred retirement age was 57 and he estimated he would need 70% of his current income in retirement.
- That he didn't want to risk his benefits being reduced in the future by either the Pension Protection Fund ('PPF') or the BSPS2.
- He wanted to take control of his pension away from his employer and liked the idea of flexible death benefits and being able to leave his remaining pension fund to his wife.

DCF also carried out an assessment of Mr C's attitude to risk ('ATR'), which it deemed to be 'moderate to aggressive' or a risk level of 6 on a scale of 1 to 10 although it noted Mr C said he wanted to proceed on a risk level of 7. It also thought he had the capacity for loss as determined by his ATR.

A transfer value analysis report (TVAS) was produced on 6 November 2017 which set out the amount of investment growth (known as the 'critical yield') required by the transferred funds to be able to match the benefits being given up in the BSPS. It said Mr C's pension would need to achieve growth of 6.16% each year to match his full scheme income at age 65 or 7.17% to match his full scheme income at age 55. It also stated that Mr C's pension would need to grow by 4.77% to match the benefits he could receive from the PPF at age 65.

On 8 November 2017 DCF provided Mr C with its suitability report and advised him to transfer his pension benefits into a personal pension and invest the proceeds with a provider ('L') in 19 different funds to be actively managed by DCF. The suitability report said the reasons for this recommendation to Mr C were, in summary:

- Control of the pension fund.
- That he wanted the opportunity to vary income in retirement to meet changing circumstances.
- To have access to 25% of his fund as tax-free cash (TFC) at age 55 without taking an income at the same time.
- To avoid the penalties associated with accessing the BSPS before his normal retirement date (NRD).
- The uncertainty about the future of BSPS, about benefits being cut further, about the scheme entering the PPF and losing the flexibility to access the fund.
- Flexible death benefits.

Mr C accepted the recommendation and signed the transfer forms on 7 November 2017. The forms were submitted to L and Mr C signed a declaration on 5 December 2017 to say that he had received and read the suitability report. DCF were remunerated with an initial advice fee of £2,784.68 and an annual ongoing adviser fee of 1% of the fund value. L also charged an annual fee of 0.25%. The transfer took effect in early March 2018.

In October 2020 Mr C's personal pension was valued at £121,877.19.

In December 2020, Mr C's representative complained to DCF that the advice he'd been given to transfer out of his DB scheme had been unsuitable and that the transfer shouldn't have been recommended in his circumstances as they were at the time.

DCF looked into Mr C's complaint but didn't agree that it should be upheld. It said the advice it had given Mr C was suitable, was in his best interests had met his needs and objectives. It said that the transfer enabled Mr C to take control of his benefits away from his employer and remove future uncertainty. And it said Mr C was happy to take an investment risk with the aim of improving his benefits. DCF also said that, by transferring, Mr C could also take

early retirement without his pension being subject to early actuarial reductions and that he also now had death benefits structured to his wishes. DCF said that even though it didn't think it had done anything wrong it had calculated the value of the benefits Mr C would have within the BSPS2 anyway in line with the pension review methodology. It said it was able to confirm that Mr C's financial position hadn't been compromised.

Unhappy with the outcome of DCF's investigation, Mr C complained to this service. Our Investigator looked into Mr C's complaint and recommended that it was upheld. He said he thought the transfer wasn't suitable for Mr C because it wasn't financially viable in that it was evident from the growth rate identified that he would attain significantly lower benefits at retirement than had been available under the BSPS. He said that DCF hadn't provided Mr C with a recommendation for why he should give up his BSPS benefits. He thought Mr C had limited investment experience so he would have been relying on DCF to make him a suitable recommendation but it hadn't. Our Investigator said that DCF should have included information about the BSPS2 within its advice to Mr C but hadn't done so.

Our Investigator went on to say that Mr C was likely to be no worse off, or even slightly better off, by remaining in his DB scheme and transferring to the PPF. And he wasn't fully persuaded that the different death benefits offered by the SIPP were better than those available to Mr C under his DB scheme. He also thought that remaining in the scheme meant Mr C would have retained the benefit of being able to apply for an ill-health pension which wasn't a benefit offered by the SIPP. Finally our Investigator thought that it was difficult for Mr C to be certain, at the age of 29, about what shape he wanted his retirement to take. Our Investigator concluded that the advice DCF gave Mr C should have been based around a comparison with BSPS2 and around how it was in his best interests to remain within his DB scheme despite the worry that was circulating amongst his colleagues.

Our Investigator recommended that DCF should compensate Mr C for the losses he incurred by transferring his DB pension and that compensation should be based on him having opted to join the BSPS2.

Mr C's representative replied to say that he accepted our Investigator's findings.

DCF responded to say it disagreed with our Investigator's findings which, it said, were unfair and unreasonable. It made the following comments:

- BSPS2 was far from certain at the time so it plainly could not have recommended a transfer. It wasn't created until 31 January 2018.
- It had provided Mr C with a list of the advantages and disadvantages of the transfer, assessed his ATR and made sure he understood about investment risk and it had acted in Mr C's best interests.
- It didn't accept that the critical yield should be the focal point for assessing the suitability of its advice. The only critical yield that should be used for comparison purposes was the one for the PPF so any focus on the critical yields associated with BSPS was wrong because it wasn't going to continue.
- The total annualised investment return on Mr C's fund whilst it was managing his pension was 10.58% which was well in excess of the annual critical yield for the PPF of 5.66%. there was no reason why Mr C wouldn't have continued to enjoy annual returns of 10.58%.
- It questioned the focus on discount rates. The regulator didn't require firms to consider or apply discount rates when advising consumers.
- That our Investigator's view was contrary to FCA guidance and had failed to consider the overall suitability of the advice including Mr C's circumstances, objectives and instructions.

- The critical yield doesn't determine the overall suitability of the advice.
- Mr C wanted to take a flexible income in retirement, to be able to retire at age 57 without actuarial reductions to his pension or without having to take an income at the same time as taking TFC, to avoid the PPF and to be able to consolidate his pension arrangements when he retired.
- That Mr C's death benefits improved on transferring.
- That even if it hadn't advised Mr C to transfer he would have proceeded anyway as an insistent client.
- Mr C had four compelling reasons for accessing his pension: to retire early without actuarial reduction; to access TFC without drawing an income from his pension; to take control of his pension; to allow any unused pension to be left to his wife and any potential children in the event of his death. Mr C would not have been able to achieve his objectives without transferring.
- That our Investigator's view diminished the importance of Mr C's objectives and instructions he gave at the time of the advice which didn't reflect the COBS rules and guidance or the FCA's guidance for assessing the suitability of the transfer. This made it unfair and unreasonable.

Our Investigator considered what DCF had said in response to his view but wasn't persuaded to change his mind about Mr C's complaint. He said that his view wasn't based on critical yields alone. And he said DCF should have done more to counter Mr C's preconceptions about the early retirement reductions in the BPS or PPF. Also he said that he didn't think accessibility of his pension funds was much of a priority for Mr C at that point in time. He thought it was more likely Mr C had sought advice because of what was going on with his employer rather than any desire to avail himself of 'pension freedoms'. Our Investigator said the same could be applied to Mr C's objective of 'control' of his pension – he thought this probably wouldn't have occurred to him but for the issues going on and, in any event, the PPF would allowed him to take his pension benefits early.

Our Investigator also thought that, given Mr C's age, it would be difficult to predict how much of his pension he'd want to access and why he would need a lump sum at age 55. Any concerns about benefits being cut further should have been considered in tandem with the risks posed by investment performance. And our Investigator said he wondered if it was sufficiently important to risk a lower level of income in retirement just to have the option of being able to pass on any remaining capital to one's dependents. He thought that the option of life assurance should have been explored and the benefit of an ill health pension (by remaining in the scheme) highlighted.

The complaint was referred to me and I issued a provisional decision in December 2022 recommending that the complaint was upheld. I made the following provisional findings:

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

*I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Business ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.*

*The applicable rules, regulations and requirements*

*The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of DCF's actions here.*

*PRIN 6: A firm must pay due regard to the interests of its customers and treat them fairly.*

*PRIN 7: A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.*

*COBS 2.1.1R: A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).*

*The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability. And the provisions in COBS 19 which specifically relate to a DB pension transfer.*

*Having considered all of this and the evidence in this case, like our Investigator, I've decided to uphold the complaint but some of my reasoning differs from his conclusions.*

*The regulator, the FCA, states in COBS 19.1.6 that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, DCF should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr C's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.*

#### *Financial viability*

*DCF carried out a transfer value analysis report (as required by the regulator) showing how much Mr C's pension fund would need to grow by each year (the critical yield) in order to provide the same benefits as his DB scheme. This analysis was based on his existing BPS scheme benefits, but Mr C didn't have the option to remain in the BPS; he either needed to opt into BPS2 or move with the existing BPS scheme to the PPF.*

*DCF has strongly argued that BPS2 may not have gone ahead so the only comparison it could provide was with the benefits available to Mr C through the PPF. But I think DCF overestimated the chance of this not happening; Mr C had received his "Time to Choose" pack by the time the advice was given. And details of the scheme had been provided; the BPS2 would've offered the same income benefits but the annual increases would've been lower. Of course, it's possible this may not have gone ahead, but I still think the proposed benefits available to Mr C through the BPS2 should've been factored in with this advice so that he was able to make an informed decision.*

*According to the fact-find and the suitability report Mr C wanted to retire from British Steel early, possibly at age 57. Mr C estimated he would need income in retirement that was 70% of his current pay. However, that doesn't appear to have been anything more than a 'best guess', given he was only 29 at the time of the advice and would likely continue working for around another 30 years.*

*The TVAS dated 6 November 2017 set out the relevant critical yields; at age 65 it was 6.16% if he took a full pension and at age 55 it was 7.17%. Given that one of the objectives Mr C had, and one of the advantages of the transfer DCF cited, was to take 25% TFC flexibly it is notable that DCF didn't calculate the critical yield required for such a scenario at either age.*

*The critical yield required to match the benefits provided through the PPF was 4.77% if Mr C took a full pension at age 65 or 4.58% if he took a reduced pension and a pension commencement tax free lump sum (PCLS). At age 55 the critical yields were 5.84% and 5.66% respectively. As I've said above, Mr C remaining in his existing DB scheme wasn't an*

option. So, the critical yields applicable to the BSPS2 benefits should also have been provided by DCF. The lower annual increases under the BSPS2 would've likely decreased the critical yields somewhat but, I still think they would've likely been higher than those reflecting the PPF benefits, particularly at age 65.

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. 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 closest discount rate to the time of this transfer which I'm able to refer to was published for the period before 1 October 2017, and was 4.7% per year for 35 years to retirement (age 65) and 4.6% for 25 years to retirement (age 55). For further comparison, the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2% per year.

I've taken this into account, along with the composition of assets in the discount rate, Mr C's attitude to risk and also the term to retirement. DCF says it assessed that Mr C was likely to be a moderate to aggressive risk investor given he had around 30 years before he expected to retire, so he had the capacity to build pension funds in between and tolerate some losses. However, I'm unable to agree with DCF's assessment of Mr C's ATR. There is nothing in the fact-find to support the conclusion that Mr C was an individual whose ATR was bordering on aggressive (or level 6 on a scale of 1 to 10 – later increasing to level 7). I would expect someone whose ATR is assessed at a level 7 to be able to display some evidence of previous investment experience. However, Mr C is recorded as having no investment experience. He has savings but they are in a cash ISA. There was nothing in his profile that, in my view, could lead to the conclusion that Mr C, someone with no experience of investing in the stock market, should reasonably be classified as someone with a moderate to aggressive ATR.

And I've seen the risk questionnaire and note that Mr C said that a fall of more than 10% in the value of his investment over the course of a single year would concern him. I think that Mr C's ATR, given his personal circumstances at the time, should more reasonably have been assessed as medium/moderate (or level 5 on DCF's ATR questionnaire).

I don't think that the length of time Mr C had to go to retirement means his capacity for loss was significant. I can see that Mr C had £16,000 in savings at the time of the advice and that he had 25 years left to run on his mortgage. It can't be assumed that just because Mr C had 30+ years to go until he retired that he could afford to 'gamble' by transferring his DB scheme. The income he was forecast to receive at retirement from the scheme (if he remained) is, I think, one he didn't have the capacity to lose.

There would be little point in Mr C giving up the guarantees available to him through a DB scheme only to achieve, at best, the same level of benefits outside the scheme. Here, the lowest critical yield was 4.58%, which was based on Mr C taking a reduced pension and a PCLS through the PPF at age 65. The critical yield if Mr C took a full pension (no critical yield having been produced for a reduced pension and TFC) through his existing scheme at age 65 was 6.16%. So, if Mr C were to opt into the BSPS2 and take the same benefits at age 65 the critical yield would've been somewhere between those figures, and likely closer to 6.16%.

Given the discount rate of 4.7% the regulator's middle projection rate of 5%, and a reasonable assessment of Mr C's ATR, I think Mr C was most likely to receive benefits of a

*lower overall value than those provided by the PPF and the BSPS2 if he transferred to a personal pension, as a result of investing in line with that attitude to risk. And I am confident had DCF informed Mr C of the true value and benefits of BSPS2 and the PPF, and then advised him to remain in the BSPS, he would have accepted this and when the availability of BSPS2 arose, he would have opted to be transferred into it.*

*DCF says that it is unreasonable to base any findings on the discount rate because taking this into account was not required by the regulator when giving advice. While I haven't based my findings on this alone, I think it is a reasonable additional consideration when seeking to determine what level of growth was reasonably achievable at the time of the advice. Under COBS 19.1.2 the regulator required businesses to compare the benefits likely to be paid under a DB scheme with those payable under a personal pension by using reasonable assumptions. So, businesses were free to use the discount rate as this would be considered a reasonable assumption of the likely returns. And in any event, this has been considered in tandem with the regulator's published projection rates, which providers were required to refer to. And it is this combination, along with Mr C's attitude to risk, which leads me to believe he'd likely be worse off in retirement if he transferred out of the DB scheme.*

*Furthermore, DCF said in its suitability letter: "The critical yield required is high and it would be very unlikely that an investment could provide a return to match the benefits you are giving up." So it is clear to me that DCF realised that by transferring, Mr C would be unable to match the benefits he was giving up.*

*DCF provided analysis in the TVAS of the critical yields Mr C's pension would need to attain for retirement at ages 55 and 65 and along with analysis of how long his pension last if he drew the same income (indexed linked) as provided by his DB scheme (without taking any TFC). If he retired at age 65 his pension would run out by the time he was 94 and if he retired at 55 it would run out by the time he was 95. If Mr C been advised to remain in BSPS however and transfer to the PPF or BSPS2, his pension would never have run out, regardless of how long he lived.*

*I note too that the TVAS analyses the 'hurdle rate' (the rate of return required to purchase an annuity to provide benefits of equal value to the estimated benefits provided by the existing scheme assuming no spouse's pension and no index linking). The hurdle rate to age 65 was 4.05% and to age 55 was 3.59%. So only the hurdle rates (and one of the critical yields I mentioned above – but only just) are below the discount rate I have referred to above. But only by using a method of comparison that didn't match the guaranteed benefits in Mr C's BSPS, could it be argued that the DB scheme transfer was financially viable. But of course, both the index linking and spouse's pension are very valuable benefits so I don't accept the hurdle rate to NRD at age 65 demonstrates that the transfer was suitable and in Mr C's best interests.*

*While DCF has referred to the past performance of the funds it recommended to him, as DCF will know, past performance is no guarantee for future performance and so I consider the discount rates and the regulator's standard projections to be more realistic in this regard in the long term rather than projecting historic returns forward, particularly over such a long period of time.*

*In summary, even if the BSPS had moved to the PPF and Mr C's benefits were reduced as a result, if he retired early I think he would have still been very unlikely to match, let alone exceed, those benefits by transferring to a personal pension. By transferring his pension I think it was highly likely that Mr C would be financially worse off in retirement.*

*Given Mr C was likely to receive lower overall retirement benefits by transferring to a personal pension, for this reason alone I don't think a transfer out of the DB scheme was in his best interests. Of course, financial viability isn't the only consideration when giving transfer advice, as DCF has argued in this case. There might be other considerations which mean a transfer is suitable and in Mr C's best interests, despite providing overall lower benefits. I've considered these below.*

#### *Flexibility and income needs*

*It seems the main reason that DCF recommended this transfer was for the flexibility and control it offered Mr C. Having considered the evidence, I don't think Mr C needed to transfer his DB scheme to a personal pension in order to have flexibility in retirement. Nor do I think he needed to access his DB scheme before his NRD such that it was at risk of actuarial reduction.*

*It's evident that Mr C could not take his DB scheme benefits flexibly. Although he could choose to take TFC and a reduced annual pension, Mr C had to take those benefits at the same time. But I'm not persuaded that Mr C had any concrete need to take TFC and defer taking his income, or to vary his income throughout retirement. To my mind this seems more of a 'nice to have' rather than a genuine objective.*

*Furthermore, DCF's advice ignores the retirement funds that Mr C would be building up over the next 30+ years, through his employer's DC scheme. The fact-find says that the combined contributions of Mr C and his employer into his DC scheme were £460 per month. So it is reasonable to assume that even with modest investment growth over the next 30+ years, Mr C will have access to a significant fund by the time he retires. And Mr C could use his DC scheme if he wanted to retire early, without needing to access his DB scheme before his NRD (thereby avoiding any actuarial reduction).*

*I accept at the time of the advice, the BSPS2 hadn't been established. Although I think the communications sent out by the scheme trustees were very optimistic that the scheme operating conditions would be met, it wasn't certain. And if Mr C had opted into the BSPS2 and it hadn't gone ahead, he would've moved with the scheme to the PPF. At age 65 Mr C would've been entitled to a pension of £7,081 per year (along with a PCLS of £47,211) from the PPF. This was lower than the pension he'd be entitled to under the BSPS2, but I don't think it would've been substantially lower such that it should've made a difference to the recommendation. As I've said above, Mr C would've had his DC scheme to draw on until his state pension became payable, or until he reached his DB scheme NRD if he wanted to retire earlier. So, I still think Mr C could've most likely met his needs in retirement even if the BSPS2 hadn't gone ahead and he'd had to move with it to the PPF.*

*Furthermore, the fact-find noted that Mr C already had savings of £16,000 and he had a monthly surplus income of £300 (his wife's income details were undocumented). It is reasonable to assume that Mr C's disposable income could be put towards building his savings pot further. And his mortgage was due to be paid off by the time Mr C was aged 54 meaning he would have even more disposable income to put towards his savings thereafter. So potentially, by the time he wanted to retire, Mr C could have had a substantial savings pot to access flexibly to top up his retirement income.*

*DCF says Mr C wanted a retirement income of 70% of his monthly salary of £1,800 (so, £1,260) – that was in today's terms however, meaning that in reality his income at retirement would need to be a lot higher. However, this was some 30 years away, so I think it was too soon for Mr C to realistically know what income he'd need in retirement. DCF says that the value of the scheme income at age 65 would be around £8,844. Clearly this would not have met the income need Mr C had cited but I don't think this shows that it was in Mr C's best*

interests to transfer to a personal pension. As I've set out above, Mr C was unlikely to obtain benefits of the same value at retirement if he transferred his funds to a personal pension. So he would have had even less income than was forecast. But I still think Mr C had a better chance of achieving his target retirement income of £1,260 per month by opting into the BSPS2 (the benefits under which were guaranteed and escalated) rather than relying on investment growth in a personal pension for all of his retirement funds. The majority of the pension provisions Mr C was building up over the next 30 years would be subject to investment risk, so I don't think it was reasonable to also place his guaranteed pension funds at risk.

And I can't see that there was any known need for the TFC without having to simultaneously draw an income (Mr C's mortgage would be repaid some years before retirement). But if, by the time Mr C retired some 30+ years hence, he needed a lump sum without wanting to start drawing his pension at the same time there were, as I've previously explained, other means available to him. And I think Mr C could've met his income needs until his state pension became payable at age 68. Mr C would have likely had a significant pension to draw on flexibly (from his DC scheme), as and when he needed, to top up his income or take additional lump sums. So, I don't think Mr C would have had to sacrifice flexibility in retirement by opting into the BSPS2.

Overall, I'm satisfied Mr C could have met his income needs in retirement by maintaining the guaranteed income available to him through the BSPS2 or the PPF at age 65 and taking additional funds from his DC scheme until his state pension became payable. So, I don't think it was in Mr C's best interests for him to transfer his pension just to have flexibility that he didn't need.

#### 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 lump sum death benefits on offer through a personal pension was likely an attractive feature to Mr C. But whilst I appreciate death benefits are important to consumers, and Mr C might have thought it was a good idea to transfer his DB scheme to a personal pension because of this, the priority here was to advise Mr C about what was best for his retirement provision. A pension is primarily designed to provide income in retirement. And I don't think DCF explored to what extent Mr C was prepared to accept a lower retirement income in exchange for higher death benefits.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr C was married so the spouse's pension provided by the DB scheme would've been useful to his spouse if Mr C predeceased her. There was also provision for a children's pension (I understand Mr C now has two) up to age 23 if they remained in full-time education. I don't think DCF made the value of this benefit clear enough to Mr C. These were guaranteed and escalated – the spouse's pension would also be calculated as if no TFC had been taken – so they were not dependent on investment performance, whereas the sum remaining on death in a personal pension was. And as the TVAS shows Mr C's pension fund would be depleted by age 94 if he achieved an annual investment return of 6.16%, so there may not have been a large sum left, if any at all, to pass on when he died. In any event, DCF should not have encouraged Mr C to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

DCF says that Mr C couldn't have achieved his objective of leaving a lump sum to his wife and children without transferring his pension; I'm unable to agree. Transferring his pension was clearly not the only way for Mr C to achieve this objective. If Mr C genuinely wanted to leave a legacy for his child(ren), which didn't depend on investment returns or how much of

*his pension fund remained on his death, I think DCF could've explored life insurance further. Mr C already had a significant death in service benefit through his employer and I can see from the fact-find that he had life insurance (though how much and for what term wasn't documented by DCF). So, arguably, Mr C already had sufficient life cover in place. But if he wanted an extra sum specifically for his wife (and later his children), he could've taken extra cover out on a whole of life basis and written it in trust for the benefit of any children.*

*Furthermore, it's evident that Mr C could nominate beneficiaries of his choosing under the DC scheme. So, he'd already made provisions to ensure that the vast majority of his pension didn't die with him.*

*In any event, whilst death benefits might be important for consumer, there generally shouldn't be a disproportionate emphasis on this compared to their own retirement needs. Overall, I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr C. And I don't think that insurance was properly explored as an alternative.*

#### *Control or concerns over financial stability of the DB scheme*

*It's clear that Mr C, 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 he was worried his pension would end up in the PPF. He'd heard negative things about the PPF and he said he preferred to have control over his pension fund.*

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

*As I've explained, by this point details of BSPS2 were known and it seemed likely it was going ahead. So, the advice DCF gave Mr C should've properly taken the benefits available to him through the BSPS2 into account and I think this should've alleviated Mr C's concerns about the scheme moving to the PPF.*

*But even if there was a chance the BSPS2 wouldn't go ahead, I think that DCF should've reassured Mr C that the scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr C through the PPF would've still provided a significant portion of the income he thought he needed at retirement, and he was unlikely to be able to exceed this by transferring out. And although the increases in payment in the PPF were lower, the income was still guaranteed and was not subject to any investment risk. So, I don't think that these concerns should've led to DCF recommending Mr C transfer out of the DB scheme altogether.*

*I also think Mr C's desire for control over his pension benefits was overstated. Mr C was not an experienced investor and I cannot see that he had an interest in or the knowledge to be able to manage his pension funds on their own. So, I don't think that this was a genuine objective for Mr C – it was simply a consequence of transferring away from his DB scheme. It seems to me that Mr C's stated desire for 'control' related more to moving his pension away from an employer that he didn't trust than to any resolution on his part to begin to manage his investment.*

*But it ought to have been explained that Mr C's employer and the trustees of the BSPS2 were not one and the same. And in any event, Mr C was not intending to leave his employment and his DC pension remained connected to his employer – so transferring out of the scheme didn't achieve a 'break' from his employer. So had DCF explained that Mr C's*

*belief regarding the control Mr C's employer had over his pension was misplaced, I think he would have been reassured by this.*

### *Summary*

*It's clear that Mr C, 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 he was worried his pension would end up in the PPF. He'd heard negative things about the PPF and he said he preferred to have control over his pension fund.*

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

*As I've explained, by this point details of BSPS2 were known and it seemed likely it was going ahead. So, the advice should've properly taken the benefits available to Mr C through the BSPS2 into account and I think this should've alleviated Mr C's concerns about the scheme moving to the PPF.*

*I don't doubt that the flexibility, control and potential for higher death benefits on offer through a personal pension would have sounded like attractive features to Mr C. But DCF wasn't there to just transact what Mr C might have thought he wanted. The adviser's role was to really understand what Mr C needed and recommend what was in his best interests.*

*Ultimately, I don't think the advice given to was Mr C suitable or in his best interests. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr C was very likely to obtain lower retirement benefits and, in my view, there were no other particular reasons which would justify a transfer and outweigh this. Mr C had a vague objective to retire at age 57 and take some TFC but I don't think this was a fully formed plan; it was some 30 years away. And I don't think DCF interrogated this objective in any meaningful way – it didn't establish how much TFC or income Mr C would need, so it couldn't offer any real insight into whether Mr C could've met this objective by moving with the scheme to the PPF or the new BSPS2, or by using the savings already available to him. So, I don't think Mr C's plans or ambitions were concrete enough for DCF to say it was in his best interests to give up his guaranteed benefits and transfer out of the scheme.*

*I appreciate that at the time the advice was given there was a lot of uncertainty around the pension scheme and I've fully taken into account that Mr C was likely keen to transfer out as he was worried about his pension and colleagues were telling him this was a good idea. However, it was the adviser's responsibility to objectively weigh up the options for Mr C. He should have advised him what was best for his circumstances and explained what he was giving up in the BSPS and that moving to the PPF was not as concerning as he thought. For the reasons given above, I think this advice should have been to remain in the BSPS.*

*Mr C was being advised by DCF after having received the "Time to Choose" document and was at the point where he had to select which option to he wanted to take. I carefully considered what Mr C likely would have done – had he been suitably advised by DCF – and on balance I think he would have opted to join the BSPS2. I say this because I don't think Mr C's retirement plans were fully formed. So, I don't think that it would've been in his interest to accept the reduction in benefits he would've faced by the scheme entering the PPF, as it wouldn't be offset by the more favourable reduction for very early retirement. And by opting into the BSPS2, Mr C would've retained the ability to transfer out of the scheme if he needed to at some point in the future. The annual indexation of his pension when in*

payment was also more advantageous under the BSPS2. So, I think DCF should've advised Mr C to opt into the BSPS2.

DCF says the BSPS2 had not been confirmed at the time it was advising Mr C and that it is unreasonable for us to say Mr C should've been advised to join this scheme as it wasn't a genuine option. I appreciate that the BSPS2 hadn't been confirmed when the advice was given. But DCF was advising Mr C only a month or so before the "Time to Choose" form had to be returned to Mr C's employer (and even sent him a reminder letter in early December 2017). I think it was clear to all parties at this point that talks were progressing well and that BSPS2 was very likely to be going ahead. So, contrary to what DCF has said, I do think this was an option that it could've recommended at the time. And I don't think DCF could be said to be acting in Mr C's best interests by ignoring the progress of the new scheme and failing to consider whether opting into this scheme was suitable for him.

So, I think DCF should've advised Mr C to join the BSPS2.

Of course, I have to consider whether Mr C would've gone ahead anyway, against DCF's advice. DCF says Mr C's needs and objectives were only met by transferring to the SIPP and considering he was fully aware of the benefits he was sacrificing, and bearing in mind the objectives he was keen to achieve, it says he would have continued with the transfer regardless. Put simply, DCF says that Mr C was as good as an 'insistent client' who would've chosen to transfer even if it had advised him against it.

I'm not persuaded that Mr C's concerns about his employer or the PPF were so great that he would've insisted on the transfer knowing that a professional adviser, whose expertise he had sought out, didn't think it was suitable for him or in his best interests. And if DCF had explained that Mr C was always unlikely to exceed the guaranteed benefits available to him by transferring, that he shouldn't be prioritising death benefits over retirement benefits, that the flexibility he sought could be met by other means, that the uncertainty over his requirements meant transferring at that time was not in interests and that the other things he'd expressed worry about were not things he needed to be as concerned about as he was, I think that would've carried significant weight. So, I don't think Mr C would have insisted on transferring out of the DB scheme.

For this reason, I think DCF should compensate Mr C for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology. And it's the benefits offered by the BSPS2 at age 65 which should be used for comparison purposes. This is because I know that Mr C is a very long way from retirement and has no firmly formed plans around when he will retire.

*I agree with our Investigator that Mr C will have been caused some distress and inconvenience by DCF's unsuitable advice so I think that DCF should pay him compensation of £300 in recognition of any trouble and upset it has caused him."*

Mr C responded to my provisional decision through his representative and said he had no further comments to make. DCF replied to my provisional decision and made the following new submissions:

- That an ATR of level 7 was reasonable for a young man who had 30 years to go to retirement. DCF enclosed a copy of major UK bank's Research Equity/Gilt Study which illustrated that long term performance in equities consistently outperforms gilts. So had DCF opted to assess Mr C as having a level 5 ATR with a more significant portfolio weighting towards gilts and bonds then it believes Mr C would have received a lower investment yield on his fund.

- That I had assumed its investment funds would not provide sufficient growth to achieve the required yield however they achieved growth of 10.58% per annum whilst Mr C was a client.
- The reason why BSPS workers wanted flexibility and control over their pensions was due to a deep level of mistrust (owing to a number of different factors in the preceding years) toward their employer as a result of job losses and benefit cuts. This mistrust meant they wanted to appoint a reputable local firm to manage their pensions.
- It had to advise on the situation as it stood at the time in 2017 which was that BSPS2 was not guaranteed to proceed.
- I had assumed that Mr C would remain in his employer's DC scheme for the next 30 years but no-one can forecast whether the works will operate for that length of time.
- My findings in relation to death benefits are based on the DC scheme running for a long time. But the transferred fund had the potential to provide superior benefits particularly if Mr C's spouse died when their children were over the age of 23.
- All workers were adamant they wanted to pass on any unused pension fund to their families and they weren't interested in life cover because they had 4 x salary death in service cover with their employer via their DC scheme. In addition, in Mr C's case there was a policy providing life and critical illness cover.
- It didn't explain to Mr C that he was always unlikely to exceed the guaranteed benefits available to him under his DB scheme because it didn't believe this was the case.
- It objected to basing any compensation calculation on the age of 65 because there were at least 7 instances where a retirement age of 55-57 was indicated in discussions with Mr C.

The complaint was referred 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 considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've thought in detail about DCF has said in response to my provisional findings but it's not persuaded me to change my mind about the outcome of this complaint. So, my provisional findings set out above should be taken as my findings on this case. However, I'll address each of the points DCF has made in turn.

Whilst I note DCF's points about why it assessed Mr C as having an ATR at level 7 I set out at length in my provisional findings why I didn't consider this to be a suitable assessment for someone of Mr C's very limited investment experience; in my view the evidence didn't support a level 7 assessment and DCF's comments here haven't persuaded me to change my mind about that. It may well be that in the long-term equities outperform gilts but DCF's duty was to fairly and reasonably assess Mr C's actual ATR and apply an investment strategy accordingly. If a fair assessment of Mr C's ATR meant lower returns on Mr C's investment then the advice DCF gave Mr C should have reflected that.

Mr C's investment funds may well have achieved growth of 10.58% per annum whilst he was a client but there was no guarantee that this level of growth would continue. And I explained provisionally why I considered the discount rates and the regulator's standard projections to be more realistic in regard to long term investment performance rather than projecting historic returns forward, particularly over such a long period of time.

I've thought about DCF's comments about the context around the workers' need for flexibility and control however, I addressed this issue fully in my provisional decision and DCF's point here hasn't caused me to change my mind. I appreciate the situation the workers were in at the time and, as my provisional findings stated, it's quite possible that Mr C was leaning towards the decision to transfer because of the concerns he had about his employer and his negative perception of the PPF. However, it was DCF's obligation to give Mr C an objective picture and recommend what was in his best interests. I still think it ought to have reassured him that moving to the PPF wouldn't have been a poor outcome for him and in any event, Mr C had the option of joining the BSPS2.

I addressed in full DCF's point about the situation regarding BSPS2 as it stood at the time of the advice in my provisional decision; this point doesn't further DCF's position about this issue and I have no further comment to make about it. So, my findings as per my provisional decision stand on this point.

I agree that it is impossible to know that Mr C's place of work would still be operational in 30 years' time. Even if it wasn't, it is reasonable to assume Mr C would have accrued some level of pension fund should it close in the future. And, if it did, it's not unreasonable to assume that Mr C would have secured alternative employment which would also have offered him membership of an occupational pension scheme that would have given him a similar level of flexibility at retirement. What was known at the time of the advice, and what DCF based its advice on, was the fact that Mr C had no *intention* of leaving his employment. And as his DC scheme remained connected to his employer transferring out of his DB scheme didn't achieve the symbolic actual break DCF said Mr C wanted in any event. My point remains that had DCF explained that Mr C's belief regarding the control Mr C's employer had over his pension was misplaced, I think he would have been reassured by this.

Whilst the transferred fund had the *potential* to provide superior death benefits particularly if Mr C's spouse died when their children were over the age of 23 the fact is this point is predicated on an assumption that Mr C becomes deceased early on in his retirement so that there is a sizeable fund to bequeath. The fact remains that if he leads a long and healthy life and if investment returns weren't as anticipated there will be very little by way of a lump sum to leave to his loved ones. So the death benefits associated with the SIPP aren't guaranteed – not like in the DB scheme. In any event, the priority was to advise Mr C about what was best for his retirement provision as a pension is primarily designed to provide income in retirement. I remain of the view that I don't think DCF explored to what extent Mr C was prepared to accept a lower retirement income in exchange for higher death benefits. And DCF should not have encouraged Mr C to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

As Mr C also had a policy providing life cover (and as I said provisionally, how much he had wasn't recorded by DCF), then in my view there was even less justification to transfer the DB scheme in order to potentially achieve higher death benefits.

I note DCF's belief that the transfer *would* exceed the guaranteed benefits Mr C had under the DB scheme. I explained provisionally why I thought that was unlikely to be the case.

Mr C is a very long way from retirement and has no firmly formed plans around when he will retire. It is for this reason that I think DCF should compensate Mr C for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology. And it's the benefits offered by the BSPS2 at age 65 which should be used for comparison purposes. I've noted the documents listed by DCF which mention Mr C's retirement age as being 57. It seems to me however that the age noted is expressed very much as a preference rather than forming a hard and fast plan. At the time of the advice Mr C was 30 years away from

retirement and could not know with any certainty at what precisely what age it he would eventually retire. And I've seen no evidence of any interrogation by DCF of Mr C's purported preferred retirement age and why he had identified it as the point he wanted to retire or indeed whether he could afford to do so.

So given the uncertainty and length of time until retirement during which a preference could very easily change, I remain of the view that it's the benefits offered by BSPS2 at age 65 that should be used for comparison purposes.

For the reasons I've given both here and provisionally (and which now form part of this, my final decision), I think this is a complaint that should fairly and reasonably be upheld.

### **Putting things right**

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and has set out its proposals in a consultation document - [CP22/15-calculating redress for non-compliant pension transfer advice](#).

In this consultation, the FCA has said that it considers that the current redress methodology in Finalised Guidance (FG) 17/9 (Guidance for firms on how to calculate redress for unsuitable defined benefit pension transfers) remains appropriate and fundamental changes are not necessary. However, its review has identified some areas where the FCA considers it could improve or clarify the methodology to ensure it continues to provide appropriate redress.

A policy statement was published on 28 November 2022 which set out the new rules and guidance - <https://www.fca.org.uk/publication/policy/ps22-13.pdf>. The new rules will come into effect on 1 April 2023.

The FCA has said that it expects firms to continue to calculate and offer compensation to their customers using the existing guidance in FG 17/9 for the time being. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with the new rules and guidance.

We've previously asked Mr C whether he preferred any redress to be calculated now in line with current guidance or wait for any new guidance /rules to come into effect. Mr C confirmed that he would like any redress to be calculated in line with current guidance.

I am satisfied that a calculation in line with FG17/9 remains appropriate and, if a loss is identified, will provide fair redress for Mr C.

A fair and reasonable outcome would be for the business to put Mr C, as far as possible, into the position he would now be in but for DCF's unsuitable advice. I consider Mr C would have most likely opted into the BSPS2 if suitable advice had been given.

DCF must therefore undertake a redress calculation in line with the regulator's pension review guidance as updated by the Financial Conduct Authority in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers.

Mr C is a long way from retirement. So, compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

This calculation should be carried out as at the date of my final decision and using the most

recent financial assumptions at the date of that decision. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr C's acceptance of the decision.

DCF may wish to contact the Department for Work and Pensions (DWP) to obtain Mr C's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P). These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on Mr C's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr C's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr C as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to his/her/their likely income tax rate in retirement - presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

The payment resulting from all the steps above is the 'compensation amount'. This amount must where possible be paid to Mr C within 90 days of the date DCF receives notification of his acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes DCF to pay Mr C.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90-day period allowed for settlement above - and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90-day period in which interest won't apply.

If the complaint hasn't been settled in full and final settlement by the time any new guidance or rules come into effect, I'd expect DCF to carry out a calculation in line with the updated rules and/or guidance in any event.

Where I uphold a complaint, I can award fair compensation of up to £160,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £160,000, I may recommend that the business pays the balance.

DCF should also pay Mr C compensation of £300 in recognition of any trouble and upset it has caused him.

## **My final decision**

Determination and money award: I uphold this complaint and require D C Financial Limited to pay Mr C the compensation amount as set out in the steps above, up to a maximum of £160,000.

Where the compensation amount does not exceed £160,000, I would additionally require

D C Financial Limited to pay Mr C any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I would only require D C Financial Limited to pay Mr C any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that D C Financial Limited pays Mr C the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr C.

If Mr C accepts this decision, the money award becomes binding on D C Financial Limited.

My recommendation would not be binding. Further, it's unlikely that Mr C can accept my decision and go to court to ask for the balance. Mr C 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 C to accept or reject my decision before 3 February 2023.

Claire Woollerson  
**Ombudsman**