DRN-3881952

The complaint

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

DC Financial Limited is responsible for answering this complaint and so to keep things consistent, I'll refer mainly to "DCFL".

What happened

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

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

Mr E first discussed these matters with DCFL around mid-August 2017. A transfer analysis and 'fact-find' were prepared and a suitability letter issued by DCFL on 29 August 2017. On 4 September 2017 Mr E said he'd read and understood the recommendations made in DCFL's suitability report.

In October 2017, members of the BSPS were being sent a "Time to Choose" letter which gave them the options to either stay in BSPS and move with it to the PPF, move to BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make their choices was 11 December 2017 (and was later extended to 22 December 2017).

Mr E's funds were transferred to a personal pension in early December 2017 following DCFL's advice.

At the time of the advice, Mr E was concerned about what these announcements by his employer meant for the security of his preserved benefits in the BSPS. Information gathered about his circumstances and objectives at the time were broadly as follows:

- Mr E was 49 years old and in good health. He was married to Mrs E and they had two children one of whom was still in education. They owned a home valued at approximately £240,000, which had an outstanding mortgage of around £82,000. The mortgage had 12 years left to run.

- Mr E earned around £42,000 per year and an extra £4,000 per year from a buy-to-let property he owned. Mrs E also worked and earned over £20,000 per year. She had her own public sector pension, and two other small private pensions totaling around £15,000. They had savings of £5,400 in deposit accounts.

- The cash equivalent transfer value (CETV) of Mr E's BSPS was approximately £387,726 (later, this was updated to £400,369) and the normal retirement age (NRA) was 65.

- DCFL said Mr E wanted to retire early if possible, at around the age of 55 but perhaps take a part-time job to supplement his income.

DCFL advised him to transfer out of the BSPS and invest the funds in a personal pension plan. DCFL said this would allow Mr E to achieve his objectives.

Mr E accepted this advice and so transferred to a personal pension. In 2021 Mr E complained to DCFL about its advice, saying he shouldn't have been advised to transfer out of the BSPS. In response, DCFL said it hadn't done anything wrong and was acting on the financial objectives Mr E had at the time.

Mr E referred his complaint to our Service. One of our investigators looked into the complaint and said it should be upheld. However, they thought if properly advised, Mr E would have opted to be put into the PPF.

Neither party agreed as Mr E's representatives said he should have been advised to transfer to the BSPS2. And DCFL still doesn't agree it did anything wrong.

As the complaint couldn't be resolved informally, it's come to me for a decision.

I issued a provisional decision (PD) about the complaint in December 2022 where I invited the parties to submit any further information or evidence they wanted me to consider. I said I was minded to uphold the complaint and that compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

I've had replies from both parties, so I'm now able to issue 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.

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

I've used all the information we have to consider whether transferring away from the BSPS to a personal pension was in Mr E's best interests.

I don't think it was, so I'm upholding his complaint. I think Mr E should have been advised to remain where he was with his pension and to transfer to the BSPS2.

Financial viability

DCFL referred in its transfer analysis and suitability letter 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. In this case, DCFL used the existing scheme (BSPS) for the critical yield comparisons, rather than the 'new' BSPS2. It implies this was because so little was known about the 'new' BSPS2 scheme at the time. But I don't think this is right and I think DCFL should have waited a short time to compare the benefits of the BSPS2 with transferring out.

It's true the situation was dynamic in that changes were being proposed at that very point, but we know a great deal about the timeline because we've seen many similar complaints to this one. A few weeks before this advice, which was dated 29 August 2017, BSPS members had been told that if the RAA was approved, they would have a choice – to move into a new scheme (BSPS2) or into the PPF with the old scheme. A newsletter was put on a microsite that had been set up to support BSPS members and I think DCFL would have been following these events closely because it was advising many similar clients.

So, I think it's reasonable to say that after mid-August 2017 DCFL should have waited for these new details (BSPS2) to emerge as the existing scheme (BSPS) was clearly no longer an option. And so using the existing scheme, rather than the new one, to make comparisons with, wasn't giving Mr E the best opportunity to make an informed decision about what to do.

I've read what DCFL said about some of these comments following me issuing the PD. It says the *"BSPS2 was not guaranteed to proceed at the time of the advice"* and if Mr E *"waited until BSPS2 commenced in March 2018, he would have lost a generous CETV, which could well have been reduced in the future".* However, as I'll show below, the main issue here is that transferring out wasn't financially viable in as much as Mr E's pension benefits in the long term were most likely to be reduced by doing so.

Also, whether or not DCFL can accurately say the CETV was more "valuable" at that point is open to question. The implication that it could have reduced in the future is conjecture – and of course, the opposite may have been possible: the CETV may have increased. In any event, as I said when I issued the PD, DCFL should have waited for details of the new scheme to emerge as everything was pointing to that being imminent.

I've also noted DCFL's comments about us using an over reliance on critical yield rates in general when assessing the suitability of pension transfers and I understand the point being made. But as I'll show, the critical yield is only a part of a range of different things which help show how likely it is that a personal pension could achieve the necessary investment growth for a transfer-out to become financially viable. I think it's also fair to say that despite some uncertainty at the time, the BSPS2 critical yields were likely to be between the BSPS and PPF yields, but most likely much closer to the existing scheme.

Nevertheless, all DCFL's subsequent documentation – and the suitability letter in particular - referred to comparisons between the BSPS and the merits of Mr E transferring out to a personal pension plan. I think it's also important to say that in making these comparisons, DCFL itself acknowledged, during its advice, that the growth rates required to match the benefits of Mr E's existing pension scheme were high. It said, for example, the financial benefits were unlikely to be matched, let alone exceeded, by transferring to a personal pension arrangement. This is because in its suitability letter DCFL said, *"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".*

DCFL explained the critical yield required to match his existing benefits in the BSPS at the age of 65 was 7.83%; and it was 16.64% compared against retirement at the age of 55. I agree that these yields are high, and in my view, they should have shown DCFL that transferring Mr E's DB scheme out to a personal plan was highly likely to produce lower pension benefits in the longer term.

The advice was given during the period when the Financial Ombudsman Service was publishing 'discount rates' on our website for use 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, I consider they provide a useful indication of what growth rates would have been considered reasonably achievable when the advice was given in this case.

The relevant discount rate published by the Financial Ombudsman Service for the period before 1 October 2017 was 4.3% per year for 15 years to retirement (calculated to age 65). And calculated against retiring at 55, the discount rate was 3.1%. As these discount rates are well below the critical yields DCFL had told Mr E about, I think they show he was very unlikely to grow his pension by enough to get anywhere near the critical yield rates I've set out above.

However, I've also kept in mind that the regulator's upper projection rate was 8%, the middle projection rate was 5%, and the lower projection rate was 2%. At the time, as DCFL assessed Mr E's attitude to risk (ATR) as balanced, I think a figure at around the mid-point of these projections was most relevant. Again, this was well below the critical yield figures for the BSPS, so I think this too showed that achieving the critical yield, year-on-year, upon transferring out just wasn't likely.

I've noted too, that DCFL said in its transfer analysis that in order to purchase an annuity to provide benefits of an equal value to the existing scheme at retirement at the age of 65, the funds required would be over £966,000, which is much higher than his CETV.

So, all these things, in my view, provide a powerful indication of the real value Mr E would lose if he transferred out to a personal pension.

Elsewhere in its transfer analysis, DCFL 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. DCFL said the critical yield to match the benefits available through the PPF at age 65 was 4.78% per year if Mr E took a pension under the reduced terms of the PPF and 4.33% per year if he opted to take a tax-free cash element and a further reduced pension. But these yields related to the *reduced* benefits available with the PPF and DCFL itself says Mr E wouldn't have wanted to transfer to this scheme. It's also important to remember here that the effect of charges and fees associated with a personal pension would have further reduced the likely growth – our investigator set out what these charges were in their 'view'.

So, I think it's fair to say that from a financial comparison perspective, DCFL's figures, shown in its suitability letter and transfer analysis documents, showed that transferring to a personal pension plan would mean Mr E would receive lower pension benefits in the longer term, when compared against the BSPS. But as I've said, DCFL should have waited and recalculated the comparisons for Mr E when the situation with BSPS2 became clear – we know this was imminent.

That transferring to a personal pension plan would mean Mr E would receive lower pension benefits in the longer term was supported by DCFL's own statements in the suitability letter, which I've referred to above. And I think it's safe to say the same can be said broadly of the BSPS2 scheme, although we don't have corresponding analysis here to show it.

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

I've considered these below.

<u>Flexibility and other needs</u>

In its suitability letter DCFL recommended a transfer to a personal pension based on what it said were Mr E's objectives which I've summarised:

- Mr E wanted to retire early and pay his mortgage off
- He wanted greater flexibility in accessing cash and to access control over his pension
- He lacked trust in his employer
- The death benefits were inflexible and didn't match what Mr E wanted

So, it seems that DCFL also recommended the transfer for the flexibility and control it offered to Mr E. I have therefore considered all of these issues in turn.

- *Retiring early / paying off his mortgage*

DCFL said Mr E wanted to retire early. However, whilst I don't doubt that Mr E might have genuinely hoped to do this, I've seen nothing that shows this was anything more than something he aspired to do at that stage, as opposed to being part of a formulated plan. I say this because Mr E was only 49 years old and from what I've seen, he had no concrete plans for retirement at that point. I've also noted that Mr E could have retired early as a member of the BSPS2 and the PPF.

So, even if I were to consider that Mr E's retirement plans were more advanced than the mere aspirations set out by DCFL - and he really did want to retire early - I think DCFL should have more comprehensively assessed the possibility of achieving this goal whilst being a member of the BSPS2 or the PPF. As I've said, DCFL chose to make all the comparisons with the existing BSPS benefits rather than wait for the BSPS2 details which were becoming available; details of BSPS2 were emerging at the time and early retirement with the PPF was already something that could be calculated.

In its response to Mr E's complaint, DCFL said the following about retiring early:

> "*under the BSPS this would not be possible, as he would suffer a 30% reduction in pension to access benefits at 55".*

In my view, this was somewhat misleading and the way this was depicted shows the nature of how the advice was 'pitched' to Mr E at the time. In fact, retiring early *was* possible from both the BSPS2 *and* the PPF and if actuarial reductions caused by accessing the pension early was a genuine concern, then Mr E could have been advised to wait a little longer before accessing his benefits under either scheme. If he'd chosen to plan his retirement under the DB scheme to, say, 60 – still five years below the NRA – then this would have resulted in a far less reduction in the pension benefits.

So, I think DCFL portrayed early retirement from these types of scheme in a negative dimension despite the guarantees and benefits found in them.

DCFL also linked accessing the benefits early to Mr E paying off his mortgage. But again, there was no real detail around this and certainly nothing to show why irreversibly exiting a DB pension scheme was necessary to pay his mortgage off in Mr E's circumstances.

The 'fact-find' for example, shows his residential mortgage as having £82,000 outstanding with 12 years remaining. But Mr E couldn't access his pension for almost 6 more years anyway. And I've seen nothing to show that his mortgage wasn't being reduced in the normal way as it was shown as being a repayment type. So, by the very earliest Mr E could access his pension (at 55), there would be far less owing on the mortgage. DCFL did not assess what the outstanding amount would be or why he couldn't just continue to pay it down as planned under the terms he'd taken it out under. It seems to me that many other options were available to him if paying off his mortgage was essential to Mr E. He and Mrs E were both in work and earned incomes that were not insignificant, and they had some modest income from elsewhere to add to their salaries. So I think it would have been possible to overpay the mortgage and thus reduce it in the remaining years. Using up Mr E's retirement savings to achieve this just wasn't necessary.

I've considered DCFL's points it submitted after my PD relating to Mr E's mortgage. It said the mortgage subsequently rose in 2020, rather than being paid down. It also said he sold his buy-to-let property in 2019. As these relate to substantially after the advice, they are not relevant in my view. There was no indication of these things in 2017 which I can see.

- *Flexibility*

DCFL said Mr E wanted to have an annual income of around £2,000 per month in his retirement. However, as I've explained above, retirement for Mr E, aged 49 years old, was most likely still quite a few years away. In my view, what income he'd need as a retiree could only really be an estimate at this point. Nevertheless, I still don't see any evidence to support a recommendation for Mr E to transfer away from a DB scheme to a personal pension for this reason.

Even if I were to accept £2,000 was roughly what Mr E needed to fund a retirement – which in all likelihood was probably many years away – I've seen nothing that shows the BSPS2 wouldn't have helped meet these needs anyway. For example, in its transfer analysis DCFL said that Mr E's estimated annual pension upon his NRA was £23,619 per year under BSPS at the age of 65. At the age of 55 it was £12,777. No figures were provided if taking a tax-free lump sum.

However, Mr E told DCFL that he intended to seek part-time work if he stopped working in the steel industry - and I think at the comparatively young age of 55 this would have been a realistic prospect. He also had income from a buy-to-let investment and indeed, some £25,000 equity in that property at the time, if he wanted to sell it instead. I've also referred to Mrs E's income which doesn't seem to have been considered. She too had pensions, including a public sector one which I think would have been a DB scheme. It's also reasonable to point out that Mr and Mrs E's children would have been in their late 20's or early 30's depending on when Mr E took retirement.

In addition to all this, I don't think DCFL promoted the additional income and flexibility Mr E would enjoy at retirement because he had also recently joined his employer's new defined contribution ('DC') scheme. He had already accrued a significant sum in this pension and both he and his employer would be contributing to this for at least another six years, even if retiring very early. In my view, he would have been in a good position: the DB pension (BSPS2) was guaranteed and index linked; and the DC pension had the added 'flexibility' were his circumstances to change. I think this fitted in very well with Mr E's likely financial needs going forward. DCFL failed to adequately account for this when advising him.

With all this in mind, I think there was every reason to believe that Mr E's income needs in retirement would be met through a combination of his pension(s), his and Mrs E's other earnings and the cost reductions of their family changes. In short, there was no need to transfer to a personal pension plan to achieve this.

DCFL also referred to Mr E being able to access the maximum tax-free cash via a personal pension. It's usually the case that more tax-free cash can be accessed from a personal pension when compared against a DB scheme; this is because the values and benefits of the two schemes are calculated differently. But DCFL should have been telling Mr E at the time that extra tax-free lump sums being removed from a personal pension, potentially from the age of 55, also came with consequences in that the amount left for his later retirement years would obviously decrease.

So, whilst I accept the notion of accessing more tax-free cash might have been appealing, this needed to be considered against the other options Mr E faced, including opting for the BSPS2. Again, I also come back to Mr E's age at the time and the fact that these assumptions about what Mr E would or wouldn't need when he retired, were effectively a 'best guess' at such a relatively early stage.

In summary, I therefore think Mr E's circumstances were much more aligned to him retiring from a DB scheme in this case, such as BSPS2, and drawing this pension in the way it was originally intended. I think DCFL's advice should have reflected this.

- *Death benefits*

DCFL says that death benefits were discussed at the time and the personal pension would better enable the retention of the value of the funds if Mr E died.

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 probably made to look like an attractive feature to Mr E. But whilst I appreciate death benefits are important to consumers, and Mr E might have thought it was a good idea to transfer the BSPS to a personal pension because of this, the priority here was to advise him about what was best for his retirement provision. A pension is primarily designed to provide income in retirement. And I don't think DCFL explored to what extent Mr E was prepared to accept a lower retirement income in exchange for higher death benefits.

Mr E was married, so this made the death benefits in BSPS2 very relevant to their situation. In this context, I think the likely death benefits attached to the new DB scheme (BSPS2) were underplayed because the spouse's pension provided by the BSPS2 would have been useful to Mrs E if he predeceased her. I don't think DCFL made the value of this benefit clear enough. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was.

In any event, there may not have been a large sum left anyway in a personal pension upon Mr E's passing, particularly if he lived a long life. So I don't think the advice should have implied his wife / children would benefit more from a personal pension. Furthermore, it doesn't appear that DCFL took into account the fact that Mr E could have nominated someone as the beneficiary of any funds remaining in his DC scheme. So, to this end, Mr E had already ensured part of his pension wouldn't 'die with him'.

I can't be sure about the extent to which life insurance was discussed in this case. However, at around 49 years old and apparently healthy, 'term' life insurance may have been a reasonably affordable product if he really did want to leave a legacy for his loved ones.

I'm therefore clear that in this case I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of the valuable retirement benefits Mr E would enjoy through the BSPS2.

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

DCFL said Mr E wanted control of his pension going forward and its investment strategy. However, there's no real evidence of what his personal involvement in money market type investing actually was. I've not seen enough evidence to persuade me that Mr E really had a capacity or desire to manage his pension if he transferred out to the extent that it was influential in his decision about what to do. There were certainly no advantages around cost in transferring out to a personal plan. In my view, DCFLs statements about control over the funds are generic, and they don't explain how Mr E's personal control would be in his best interests.

I've read what DCFL has said about this now. It says it would have continued to advise Mr E and it concedes he could not manage the investments on his own. Of course, this would have added to his costs – costs he didn't have in the DB scheme and this just adds weight, in my view, to the reasons why transferring out wasn't right for him.

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

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

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

However, even if there was a chance the BSPS2 wouldn't go ahead, I think that DCFL should have reassured Mr E that the scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr E through the PPF would have still provided a significant portion of the income he thought he needed at retirement, and he was still unlikely to be able to exceed this by transferring out, given his ATR. 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 DCFL's recommendation to Mr E to transfer out of the DB scheme altogether.

Summary

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 E. But DCFL wasn't there to just transact what Mr E might have thought he wanted. The adviser's role was to really understand what Mr E needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr E was suitable. He was giving up a guaranteed, risk-free and increasing income within the BSPS. By transferring to a personal pension, the evidence shows Mr E was likely to obtain lower retirement benefits. And I don't think there were any other particular reasons which would justify the transfer and outweigh this. I think DCFL ought to have advised him against transferring out of his DB scheme for this reason, particularly as it meant he'd be worse off in retirement.

So, I don't think it was in Mr E's best interests for him to transfer his DB scheme to a personal pension when he had the opportunity of opting into the BSPS2.

I think it was clear to all parties at the time that BSPS2 was most likely going ahead. Mr E still had several years before he intended to retire. So, I don't think that it would have been in his interest to accept the reduction in benefits he would have faced by the scheme entering the PPF, as it wouldn't be offset by the more favourable reduction for very early retirement. By opting into the BSPS2, Mr E would have retained the ability to transfer out of the scheme nearer to his retirement age if he needed to.

Also, I think he would have wanted to consider a wife's pension and that it would be set at 50% of his pension at the date of death, and this would be calculated as if no lump sum was taken at retirement (if Mr E chose to do so). The annual indexation of his pension when in payment was also more advantageous under the BSPS2.

On this basis, I think DCFL should have advised Mr E to opt into the BSPS2.

I have considered whether Mr E would have transferred to a personal pension in any event. I accept that DCFL disclosed some of the risks of transferring to Mr E, and provided him with a certain amount of information. But ultimately it advised Mr E to transfer out, and I think he relied on that advice.

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

I'm also not persuaded that Mr E's concerns about the PPF were so great that he would have insisted on transferring his pension, knowing that a professional adviser, whose expertise he had sought out and was paying for, didn't think it was suitable for him or in his best interests. So if DCFL had explained Mr E was also unlikely to exceed the benefits available to him through the PPF if he transferred out, and that he could meet his income needs in retirement without risking his guaranteed pension, I think that would have carried significant weight.

In arriving at this decision, I've fully considered DCFL's wider responses to various issues outlined in my PD of last December. I've dealt with some of the issues raised, in what I have explained above, in this decision. For the other matters variously raised by DCFL, I'm not going to repeat these or go into much detail but they relate to his early retirement aspirations, the flexibility issues and the death benefits. I previously discussed all these matters at length in the PD and they are set out again in this final decision. Essentially DCFL hasn't said anything new, but rather, has repeated the positions it previously took. I'm satisfied what I've had to say about these issues are comprehensively explained, although of course I accept DCFL doesn't agree with me.

I've also considered an unsigned client questionnaire form which DCFL sent through to me following the issuing of the PD, but in my view, this adds nothing to the complaint either way.

In light of the above, I am upholding this complaint. DCFL should now compensate Mr E for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Putting things right

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

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

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

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

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

We've asked Mr E whether he preferred any redress to be calculated now, in line with current guidance, or wait for any new guidance/rules to be published. He says he doesn't want to wait for the new guidance to come into effect. I am therefore satisfied that a calculation in line with FG17/9 remains appropriate and, if a loss is identified, will provide fair redress for Mr E.

For clarity, Mr E has not retired. 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 E's acceptance of the decision.

DCFL may wish to contact the Department for Work and Pensions (DWP) to obtain Mr E'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 E's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr E'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 E as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to his likely income tax rate in retirement - presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

The payment resulting from all the steps above is the 'compensation amount'. This amount must where possible be paid to Mr E within 90 days of the date DCFL 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 DCFL to pay Mr E.

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 DCFL to carry out a calculation in line with the updated rules and/or guidance in any event.

I have also considered the impact on Mr E of the unsuitable advice and transfer. Our investigator recommended that a sum of £300 should be paid to Mr E by DCFL for what he referred to the upset and worry caused by this unsuitable transfer. I've taken into consideration Mr E's age, family circumstances and the substantial amount he'd built up in his pension to that date; Mr E had built up his pension over a long. Also, by retirement this DB pension would still have been a significant part of his overall pension entitlement so I think the thought of losing benefits would have negatively impacted Mr E. So, I agree that DCFL should pay Mr E £300 for the trouble and upset caused by the unsuitable advice which has likely had an impact on his retirement planning

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.

My final decision

<u>Determination and money award</u>: I am upholding this complaint and I now direct DC Financial Limited to pay Mr E 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

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

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

If Mr E accepts my final decision, the money award becomes binding on DC Financial Limited.

My recommendation would not be binding. Further, it's unlikely that Mr E can accept my decision and go to court to ask for the balance. Mr E may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 1 February 2023.

Michael Campbell
Ombudsman