DRN-4331615

The complaint

Mr O complains about the advice given by David Stock & Co Limited ('DSCL') 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 caused him financial loss and distress.

Mr O is represented in this complaint, but for ease I'll refer only to Mr O.

What happened

In March 2016, Mr O's employer announced that it would be examining options to restructure its business, including decoupling the employer DB scheme ('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 ('the BSPS2'). Alternatively, members were informed they could transfer their benefits to a personal pension arrangement.

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

In October 2017, members of the BSPS were 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 choice was 11 December 2017, and was later extended to 22 December 2017.

Mr O returned his completed "time to choose" form before the deadline, opting to move to the BSPS2. But it seems Mr O was still concerned about the security of his preserved benefits in the DB scheme. So in December 2017, Mr O approached independent financial adviser DSCL to discuss his pension and retirement needs.

At DSCL's request, Mr O completed a one page 'initial questionnaire' dated 11 January 2018. DSCL then prepared a transfer value analysis report ('TVAS') and an 'initial report' for Mr O, which were both dated 12 January 2018.

DSCL and Mr O met on 15 January 2018. DSCL completed a fact find for Mr O to gather more information about his circumstances and objectives. It recorded he was age 39 and was unmarried but had a partner and two dependent children aged 12 and 16. That he was employed, though no information about income and expenditure was recorded. It recorded that Mr O had another pension, this was his employer's new defined contribution ('DC') pension which he'd joined in April 2017, though DSCL didn't record the value of this pension or what contributions were paid. DSCL also didn't record whether Mr O had any other assets or debts. DSCL recorded that Mr O wanted flexibility over who his DB scheme benefits would be left to as he wasn't married, so he was concerned these would be lost to his partner and children in the event of his death. DSCL assessed Mr O's attitude to risk ('ATR'), which it deemed to be 'moderate', or five out of ten. And it assessed his capacity for loss, which it deemed to be 'minimal'.

When they met on 15 January 2018, it seems DSCL also discussed its 'initial report' with Mr O. The initial report said Mr O was attracted by the enhanced cash equivalent transfer value ('CETV') of his DB scheme benefits and wanted to have this in his control. That he was concerned the DB scheme would provide very little to his family in the event of his death, and thought BSPS2 could eventually fall into the PPF. And that DSCL had discussed the risks of transferring with Mr O. Ultimately, the initial report said that if Mr O was confident he understood the risks and benefits, then DSCL could help him select investment funds and the next step was to complete the SIPP application forms, with his transferred DB funds to initially be held in a cash type fund until a full investment portfolio had been agreed.

On the same date, Mr O signed a SIPP application form. He also signed to confirm DSCL had fully advised him about transferring from a DB scheme to a SIPP, that he understood the risks but wanted greater security for him and his family through having control of his DB scheme benefits, and he wouldn't hold DSCL liable for any loss he might incur because of his decision to transfer.

DSCL prepared a 'client agreement' document that said it would, with *"very few exceptions",* confirm to Mr O in writing the basis of its recommendations. The 'Financial Review and Recommendation' and other sections of this agreement were crossed out with a note saying *"Refer to Initial Report 12-1-18".* And DSCL hasn't provided a copy of any further suitability report. So it seems the initial report of 12 January 2018 was DSCL's suitability report here.

After receiving DSCL's advice, £60,833.19 was transferred out of Mr O's DB scheme. This remained in a cash fund within his SIPP.

Mr O complained to DSCL in 2021 about its 2018 advice because he realised it might have been unsuitable and caused him a financial loss.

But DSCL didn't uphold Mr O's complaint. It said it had followed the regulator's requirements and guidance, undertaken a thorough advice process, explained the risks so Mr O was able to make an informed decision to transfer, and the transfer met his objectives. DSCL said it had tried to meet with Mr O about where to invest his transferred funds, with no success.

Mr O referred his complaint to our Service. One of our Investigator's upheld it, as they thought the advice was unsuitable. They said the transfer likely wouldn't leave Mr O better off. That his concerns about the PPF and death benefits didn't outweigh this, and DSCL should have reassured him about these concerns. They said DSCL should put Mr O into the position he'd have been in but for its unsuitable advice and carry out a redress calculation on that basis. And it should pay Mr O a further £300 compensation for the distress it caused him on discovering the advice was unsuitable and had perhaps led to a large financial loss.

DSCL disagreed, for some of the same reasons it gave in its response to Mr O's complaint. It added that Mr O initially opted for BSPS2 but changed his mind after his colleagues transferred out of the DB scheme. That Mr O was told to transfer by a union representative and an adviser paid for by the BSPS trustees, and he wanted to take the enhanced CETV. So Mr O was insistent on transferring despite any risks, and he'd approached other advisers but they wouldn't advise him because he was insistent. But DSCL had been willing to help Mr O so he didn't risk being scammed online, and had charged a low fee. And DSCL told Mr O that if he transferred as an insistent client, his right to complain would be affected.

DSCL also added that it had avoided using the word 'recommendation' - it gave Mr O the information to decide for himself and hadn't encouraged him to transfer. Mr O was worried about his employer's stability, and DSCL thought he was right to be as the UK steel industry wasn't doing well. Mr O wanted control and flexibility over his pension, in particular over the death benefits. And the DB scheme would only provide Mr O with a small pension and Mr O thought he could get better investment growth. DSCL said Mr O's DB fund was relatively small and would be worth less than the current relative value, as it wasn't inflation proof. And that Mr O thought his job might shorten his life expectancy so he wanted to enjoy his pension while he had his health.

Further, DSCL thought any redress should be capped because Mr O hadn't let DSCL implement its investment recommendations which would have increased his pension's value, and our Service had set a precedent for this in a previous and separate complaint against DSCL. And any redress calculations should be based on Mr O moving to the PPF, as the BSPS2 wasn't certain to go ahead at the time of the advice and could not exist until the end of March 2018 in any case.

Mr O thought redress should be calculated to age 65 as he hadn't yet retired or accessed any of his pension benefits. He didn't remember being given pension advice by a union representative, and said they wouldn't have been authorised for that anyway. And Mr O said DSCL hadn't offered a meeting about investment recommendations, despite him asking for this in 2019.

Our Investigator didn't change their opinion. They said it was DSCL that was authorised to advise Mr O, and it wasn't the case that it had recommended he not transfer and had then treated him as an insistent client. Instead, DSCL seemed to accept it had recommended a transfer and was now arguing the transfer was suitable. Our Investigator wasn't persuaded Mr O would have insisted on a transfer against DSCL's advice. And that regardless of the size of the CETV, advice to transfer still had to be suitable. The BSPS2 was covered by the PPF, so Mr O's pension didn't depend on the steel trade. And while the BSPS2 wasn't finalised at the time of the advice, Mr O opted into it under the "time to choose" exercise so he would have joined it in due course if DSCL had given him suitable advice. So, redress should be based on him joining the BSPS2.

As agreement couldn't be reached, this complaint was referred for an Ombudsman's decision.

In August 2022 the regulator, the Financial Conduct Authority ('FCA'), launched a consultation on changes to its DB transfer redress guidance. So, the Investigator wrote to Mr O to advise him of the FCA's proposed changes which were due to come into effect in April 2023 and to give him the option to have any redress due to him calculated under the then current guidance or to wait for the new rules to come into effect. However, Mr O was informed that if the complaint had not been resolved by the time the new rules and guidance came into effect, the new rules and guidance would apply in any event.

Whilst the case was awaiting an Ombudsman's decision, DSCL carried out a redress calculation with no admission of liability. It said this showed no financial loss because Mr O's current SIPP value was enough to buy a deferred annuity to replicate his DB scheme benefits, and Mr O should mitigate his loss by converting his SIPP to a deferred annuity.

Our Investigator said FG17/9 methodology should be followed at this point, not deferred annuity quotes. And DSCL's calculations hadn't used the actual charges or accounted for Mr O now being married, as they should have.

Mr O told us he wanted to wait and have any redress calculated in line with any new guidance/rules to be published by the regulator.

The Investigator informed both Mr O and DSCL that if the Ombudsman considering the case decided to uphold it, they could require DSCL to calculate any redress owed to Mr O using the FCA's BSPS-specific redress calculator.

DSCL said it expected to recalculate redress in mid-July 2023 using the regulator's calculator. But the complaint remained unresolved, so it came to me for a decision.

On 9 August 2023 I issued my provisional decision. In summary, I acknowledged that flexibility, control and potential for higher death benefits on offer through a SIPP would have sounded attractive to Mr O. But I said DSCL wasn't there to simply arrange what Mr O might have thought he wanted – it was instead obliged to give him an objective picture and to recommend what was in his best interests.

I said DSCL's advice to transfer was unsuitable because it meant Mr O was giving up a guaranteed, risk-free and increasing income, and there was no clear financial benefit to Mr O for transferring out of the DB scheme. I didn't think there were any reasons which would justify a transfer and outweigh this. And the potential for higher death benefits wasn't worth giving up the guarantees associated with his DB scheme. So I said DSCL should have advised Mr O to maintain his choice to opt into the BSPS2, given his particular circumstances and lack of certain retirement plans. I thought DSCL should compensate Mr O for the unsuitable advice, using the regulator's rules for calculating redress for non-compliant pension transfer advice, and using the benefits available to Mr O through the BSPS2 at age 65 for comparison purposes. And I said DSCL should also pay Mr O £300 compensation for the distress the matter has caused him.

Mr O confirmed his likely income tax rate in retirement would be 20%, and accepted my provisional decision.

DSCL had a question about the redress calculation and asked that Mr O provide a plan valuation from his SIPP provider. Our Service directed DSCL to the relevant part of the regulator's rules, and forwarded DSCL's request to Mr O.

As both parties have had the opportunity to respond to my provisional decision, I'm now in a position to make my 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.

Neither Mr O nor DSCL have disputed the findings I made in my provisional decision about the suitability of the advice Mr O received. So, I will simply set out my findings again beneath.

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

The applicable rules, regulations and requirements

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

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

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

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

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

Having considered all of this and the evidence in this case, I've decided to uphold the complaint.

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

I should first say here that while DSCL accepts that it gave Mr O advice on the transfer of his BSPS benefits, it says it did not give Mr O a personal recommendation. However, I'm mindful that DSCL has also consistently said that the advice it gave Mr O was suitable – it said the transfer was suitable for Mr O. And in its response to the Investigator's view, it reiterated this, saying

"…The FCA conduct rule requirements were followed and complied with in line with the FCA's suitability requirements. Following the correct process and FCA rules [the adviser] was able to establish his unique circumstance. This meant [the adviser] had complied with the FCA conduct of business suitability rules as he understood his personal and financial circumstances along with his future objectives."

Given that DSCL says the adviser complied with the regulator's suitability rules, having understood Mr O's circumstances and objectives, it seems to me that it did give him a recommendation to transfer out of the BSPS. While the paperwork DSCL is limited and does not set out what its recommendation to Mr O was, I'm persuaded on balance that it did give Mr O a recommendation – and this is consistent with what Mr O has said about the advice he received.

DSCL has also referred to Mr O being insistent on the transfer taking place. But it doesn't appear that it processed the transfer on an "insistent client" basis. An "insistent client" is a customer who wishes to proceed with a transaction which is against the advice given to him by the firm. Although this wasn't formalised in COBS until after Mr O received the advice from DSCL, in February 2016, the regulator provided guidance about what steps it expected businesses to take when advising an insistent client. There are three key steps, which it set out on its website as follows.

1. *You must provide advice that is suitable for the individual client, and this advice must be clear to the client. This is the normal advice process.*
2. *You should be clear with the client about the risks of their chosen course of action. If the advice includes a pension transfer, conversion or opt-out, there may be additional requirements. These may include ensuring the advice is provided by or checked by a*

pension transfer specialist, comparing the defined benefit (DB) scheme with the defined contribution (DC) scheme and starting by assuming the transfer is not suitable (see COBS 19.1).

3. *It should be clear to the client that their actions are against your advice.*

The regulator said the advice should be set out clearly in the suitability report, and that it needed to be clear with its client about the risks of their chosen course of action and that they are acting against its advice. Whilst this was guidance, and not rules, I would've expected DSCL to have been aware of this and ensured that the advice and process it followed was consistent with the regulator's expectations. There isn't any evidence to demonstrate that DSCL advised Mr O not to transfer out of the BSPS. So, I'm satisfied that it did advise him to transfer out and that it did not process the transfer on an "insistent client" basis.

As such, in line with the regulator's guidance, DSCL should only have considered the transfer to be suitable if it was clearly in Mr O's best interests. And having looked at all the evidence available, I'm not satisfied the transfer was in Mr O's best interests.

Financial viability

DSCL carried out a transfer value analysis report (as required by the regulator) showing how much Mr O's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield).

The advice was given after the regulator gave instructions in Final Guidance FG17/9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published by the Financial Ombudsman Service on our website. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor.

Mr O was age 39 at the time of the advice and didn't have a proposed retirement age yet, because as the fact find noted, it was too early for him to have thought about this. But DSCL's TVAS was based on him retiring at age 65. DSCL argues its 2018 advice was suitable because Mr O wanted to take advantage of an enhanced CETV. It may be that the CETV was enhanced at that time, but the TVAS nonetheless quoted the critical yield required to match Mr O's benefits at age 65 was 5.45% if he took a full pension, though it didn't record what critical yield would be required if Mr O took TFC and a reduced pension. And the TVAS quoted the critical yield required to match the benefits available through the PPF at age 65 was 4.57% per year if Mr O took a full pension and 4.33% per year if he took TFC and a reduced pension.

I should say here that the critical yield figures I've referred to above are based on the existing scheme benefits. But remaining in the scheme wasn't an option; Mr O had to choose to opt into the BSPS2, move with the existing scheme to the PPF or transfer to a personal arrangement. By the time the advice was given, the details of the BSPS2 were known and Mr O had chosen to opt into the BSPS2 under the "time to choose" exercise. So, the critical yields applicable to the BSPS2 benefits should've formed the basis of the advice so Mr O was able to make an informed decision, and I think the critical yield's applicable to the BSPS2 benefits could have been lower. Nonetheless, in order for a transfer to be financially viable, I'd expect there to be a clear prospect of returns in excess of the critical yield in order to justify giving up the DB scheme guaranteed benefits. And I'm not satisfied that was the case here.

The relevant discount rate closest to when the advice was given which I can refer to was published by the Financial Ombudsman Service for the period before 1 October 2017, and was 4.6% per year for 25 years to retirement. I've kept in mind that the regulator's projection rates had also remained unchanged since 2014: the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

I've taken this into account, along with the composition of assets in the discount rate, Mr O's 'moderate' attitude to risk and also the term to retirement. There would be little point in Mr O giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme. And I think DSCL's assessment of Mr O's ATR as 'moderate' was slightly too high. I say this because its fact find records that Mr O had little to no investment experience, that his primary concern was the security of his capital, and that he had minimal capacity for loss. But even if I accepted that Mr O's ATR was 'moderate', I think Mr O wasn't likely to be able to improve on the benefits available to him through the PPF and the BSPS2. So there was no clear financial benefit to Mr O for transferring out of the DB scheme and losing its guaranteed benefits.

DSCL has provided a TVAS and other documents which include financial models, and I've considered these along with everything else DSCL has provided. But none of these seem to show the impact of Mr O transferring his DB scheme benefits and taking the same level of income he would've been entitled to under the scheme on the value of his remaining pension until his estimated death. So, it's difficult to see whether Mr O could've made his funds last until he died. And there may not have been a large sum left, if any at all, to pass on when Mr O died, which I'll return to.

Further, I've not seen anything to make me think DSCL considered what income Mr O would need in retirement because, as its fact find recorded, it was too early to say what his retirement income needs might be. So, in my view, the financial models don't offer any insight into whether Mr O could've met his retirement needs by transferring out of the BSPS or maintaining his choice to join the BSPS2.

And given Mr O's expected retirement was so far in the future, about 25 years, I don't think Mr O needed to make a decision to transfer out of his DB scheme at that time. This is particularly the case given Mr O didn't know what income he'd need in retirement. The BSPS2 provided him with a similar level of starting benefits and he'd still have the option of transferring out of that scheme nearer to his desired retirement age if that suited his particular circumstances at that time. So, I don't think Mr O should've been encouraged to make an irreversible decision to leave his DB scheme when he was still decades away from his planned retirement age and he wasn't likely to be able to improve on either the benefits available through the BSPS2 or the PPF by transferring out.

For this reason alone a transfer out of the DB scheme wasn't clearly in Mr O's best interests. Of course, financial viability isn't the only consideration when giving transfer advice, as DSCL has argued in this case. There might be other considerations which mean a transfer is still suitable overall, despite providing overall lower benefits. I've considered this below.

Flexibility and income needs

While transferring Mr O's BSPS benefits to a SIPP would provide him with flexibility to take tax-free cash ('TFC') from age 55 and leave his funds invested, there's no evidence to support that Mr O required such flexibility in retirement. As I've said above, Mr O's retirement was likely to be about 25 years away so he didn't yet know whether he'd want or need any flexibility in the way he accessed his benefits. And there's no pressing need for flexibility recorded in any of the documents DSCL has provided – indeed, he was still 15 years away from even being able to access his TFC. I think if asked, most people would say flexibility is desirable, but that doesn't mean it was a genuine objective for Mr O at the point of the advice.

I also can't see evidence that Mr O had a strong need for variable income throughout his retirement. That's because there's no calculation of his retirement income needs because as I say, it was still very many years until Mr O could retire. And Mr O's other pension could provide him with a degree of flexibility in future, since the fund he would build up over the next 25 years could be taken flexibly.

Ultimately, at the time of the advice, Mr O didn't have any concrete retirement plans, although he didn't expect to retire before age 65. This was about 25 years away and his income needs at that point were unknown. So I think it was too soon to make any kind of decision about transferring out of the DB scheme. At the point of taking advice, Mr O had already opted to join the BSPS2 despite being still being unsure about this. So, I don't think Mr O should have been encouraged to give up his guaranteed benefits when he didn't know what his income needs in retirement would be. If Mr O later had reason to transfer out of the BSPS2 because he needed a greater degree of flexibility, he could have done so closer to retirement.

So, I don't think it was suitable to advise Mr O to transfer in order to have flexibility that he didn't really need.

Death benefits

At the time of the advice, DSCL recorded that a key reason for Mr O to transfer to a SIPP was so that the remaining value of his pension could be passed to his partner and his dependent children. Because Mr O and his partner weren't married, Mr O was concerned his partner wouldn't be entitled to the spouse's pension under Mr O's DB scheme or the PPF in the event of Mr O's death.

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 SIPP was likely an attractive feature to Mr O. But whilst I appreciate death benefits are important to consumers, and Mr O might have thought it was a good idea to transfer his DB scheme to a SIPP because of this, the priority here was to advise Mr O about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think DSCL properly explored to what extent Mr O was prepared to accept a potentially lower retirement income in exchange for higher death benefits.

My understanding is that neither the BSPS2 nor the PPF will pay a spouse's pension to an unmarried partner. So I accept it's not likely that Mr O's partner would have been able to receive a spouse's pension under the BSPS2 or the PPF at the time of the advice. But if Mr O died before retirement then his partner would be entitled to a death in service benefit – assuming she was nominated as his beneficiary.

Given Mr O's retirement was expected to be about 25 years away, I don't think his marital status was as relevant at the time the advice was given. I wouldn't expect DSCL to suggest to Mr O that he and his partner should marry simply to allow her to access Mr O's death benefits under his existing DB scheme. But given the very valuable spouse's benefits offered under the DB scheme and the PPF, I think it's reasonable to expect DSCL to have explored with Mr O whether he and his partner planned to marry in the future in any case. But there's nothing in the documents provided by DSCL to suggest it did so. And Mr O and his partner married less than eight months after the advice. So, I think it's likely at the time of the advice that this was envisaged in the near future, and before retirement. So, I don't think the death benefits attached to the DB scheme should've been dismissed as they were by DSCL.

If Mr O was married, the spouse's pension provided by the DB scheme would've been useful to his spouse if Mr O predeceased her. I don't think DSCL made the value of this benefit clear enough to Mr O. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a SIPP was. DSCL didn't consider what Mr O's retirement income needs would be, and its financial models don't show the impact of Mr O transferring his BSPS benefits and taking the same level of income he would've been entitled to under the scheme on the value of his remaining pension until his estimated death. So there still may not have been a large sum left, if any at all, to pass on when Mr O died. In any event, DSCL should not have encouraged Mr O to prioritise the potential for higher death benefits through a SIPP over his own security in retirement.

DSCL now argues that Mr O was concerned his job would shorten his life expectancy. But the documents provided by DSCL from the time of advice don't record any such concerns or discussion. Instead, they record that Mr O's health was good. In any case, Mr O not reaching his life expectancy was only a possibility and it was also possible that he would exceed this, in which case Mr O would need his pension to last longer. If Mr O transferred out of the DB scheme, he would be relying on investment returns to ensure sufficient capital remained in the SIPP to provide the death benefits, whereas the spouse's/dependent's pension was guaranteed and escalated.

Furthermore, if Mr O genuinely wanted to leave a legacy for his partner and his children, which didn't depend on his existing DB scheme, investment returns or how much of his pension fund remained on his death, I think DSCL should've instead explored life insurance. But the documents from the time of the advice don't record any discussion about this. And I've not seen that DSCL obtained any quotes for life cover for Mr O, so I don't think it gave Mr O enough information on which to base a decision about whether or not this was something he wanted or could afford. The starting point here should have been for DSCL to ask Mr O how much he would ideally like to leave to his partner or any other beneficiary, and how much he could afford to contribute. Insurance on this basis was likely to be available to Mr O and would have enabled him to leave a legacy without risking his retirement income.

I'm also mindful that Mr O had another pension he was likely to be paying into for more than another 25 years until he retired. This fund could've been passed on to a beneficiary of his choice at retirement.

Overall, I don't think the death benefits available through a transfer to a SIPP justified the likely decrease of retirement benefits for Mr O. And I don't think that the alternative means of providing a legacy for his partner and children were properly explored.

Control or concerns over financial stability of the DB scheme

I think Mr O's desire for control over his pension benefits was overstated. Mr O 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 his own. Indeed, it appears Mr O left the funds uninvested, which was not in his best interests. So, I don't think that this was a genuine objective for Mr O – it was simply a consequence of transferring away from his DB scheme.

DSCL argues financial security was a compelling reason for Mr O to transfer. That he was worried about the financial stability of his employer and the BSPS. And that hindsight shouldn't be used here, because there was a great deal of uncertainty and concern about the BSPS, the BSPS2 and the PPF, and the BSPS2 wasn't guaranteed to go ahead. And even if it did, Mr O was worried it might fall into the PPF. So DSCL might argue that avoiding the PPF was a compelling reason for Mr O to transfer his DB benefits to a SIPP, to the extent that he opted into the BSPS2 during the "time to choose" exercise while seeking advice about his options.

I'm aware that many BSPS members like Mr O had serious concerns about their employer's future and the effect this would have on their pension pots. The situation was evolving after the BSPS closed in March 2017. There was also some widespread apprehension about what moving pensions to the PPF meant for members. So, it's well known that this was a period of uncertainty for people like Mr O. But this only serves to emphasise the need at that time for a balanced assessment of the options available and ultimately the need for suitable advice.

I understand there will be instances where a client seeks financial advice with preconceived ideas or concerns about the financial health of an employer or pension scheme. But DSCL was tasked with rationally addressing those concerns and providing an appropriately balanced view of all the available options. And DSCL needed to be able to clearly demonstrate that transferring out of his DB scheme was in Mr O's best interests.

I don't dispute that when Mr O approached DSCL there was still the possibility that his pension could move to the PPF. And DSCL has argued it wasn't certain – at the time of its advice – that the BSPS2 would go ahead. But I think DSCL overestimated the chance of the BSPS2 not happening. I note that Mr O sought advice quite soon after he received his "time to choose" pack. In May 2017, the PPF announced that the terms of the RAA had been agreed. Under the announced plans, Mr O's employer agreed to set up and sponsor the BSPS2, subject to certain conditions relating to funding and size being satisfied. The Pensions Regulator approved the RAA on 11 August 2017.

Subsequently on 28 August 2017 the BSPS administrators provided scheme members, including Mr O, with an important update in respect of BSPS transfer values. The update said an expected payment into the BSPS of £550 million by Mr O's employer, as part of its agreement with The Pension Regulator, was likely to result in an improvement to transfer values. And for those with unexpired transfer values, like Mr O, administrators would issue updated valuations in October 2017, which would be guaranteed until at least December 2017. The confirmation that Mr O's employer had made the payment referred to was announced on 11 September 2017. That was several months before DSCL gave its advice to Mr O.

Given that the whole purpose of the RAA was to prevent the entirety of the BSPS entering the PPF, I think DSCL should have been aware that it was more likely than not that the BSPS2 would go ahead. In those circumstances, while entry into the PPF was still a possibility, I think DSCL should have explained to Mr O that it seemed more likely than not that the BSPS2 would go ahead. And it should also have addressed any remaining concerns Mr O had about his employer's influence over his pension - the trustees of the BSPS and his employer were not one and the same. But DSCL didn't do these things.

I also think DSCL ought to have reassured Mr O that the possibility of his scheme moving to the PPF wasn't as concerning as he thought. The PPF still provided him with a guaranteed, increasing pension without associated investment risk. And as I've explained above, Mr O was still unlikely to be able to improve on the benefits available to him through the PPF if he transferred out to a SIPP.

Overall, I appreciate Mr O had very strong feelings about transferring out and the PPF when he sought advice from DSCL. But I think if DSCL had provided clear and objective information about Mr O's options and benefits whichever DB scheme he was in, and explained that Mr O could meet his objectives by maintaining his choice to join the BSPS2 or moving to the PPF, I think Mr O would've been reassured by this and accepted the advice. And given that Mr O had already opted into the BSPS2 under the "time to choose" exercise, I'm satisfied he would've been prepared to maintain this choice had he been advised to do so. So, if he'd received that advice from DSCL, he would therefore have joined the BSPS2 in due course.

Suitability of investments

DSCL advised that Mr O's SIPP be invested in a cash fund initially. And there is now a dispute as to who is responsible for the funds remaining in a cash fund instead of being invested in a fund that had the potential for higher investment growth. As part of this, DSCL says a previous decision made by our Service in a separate complaint has set a precedent for redress being capped.

I should be clear that our Service's approach is to consider the particular circumstances of each individual complaint. So, that's what I've done here.

And advice that was suitable overall would have included a recommendation to invest in a suitable fund, not cash, from the outset. And I think DSCL failed to do this. Ultimately, DSCL advised Mr O to transfer his DB scheme benefits, and had it not done so, Mr O wouldn't have been vulnerable to poor investment choices.

Summary

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

DSCL's initial report, the only suitability report it produced for Mr O, said *"You have asked us to provide advice on the subject of transferring."* But DSCL didn't clearly and simply explain to Mr O how he could meet his objectives by remaining in the DB scheme. Instead, I think it provided Mr O with information that was ambiguous and unbalanced.

I say this because while I accept the initial report included information about the risks of transferring, I think it also minimised the valuable benefits to Mr O of remaining in his DB scheme - as I've explained, I don't think the death benefits attached to the DB scheme should've been dismissed as they were by DSCL. And DSCL suggested the existing DB scheme guarantees might be lost in future, by saying that BSPS members thought many of the scheme guarantees they'd had on joining had now disappeared.

I acknowledge DSCL's documents from the time of the advice suggest Mr O might have wanted to transfer out. But I think this was due to ambiguous and unbalanced advice on DSCL's part, and to DSCL's failure to address the misconceptions Mr O had. Therefore, I don't think Mr O was able to make an informed choice – I think he probably believed the only way to meet his objectives was to transfer out.

So ultimately, I don't think the advice given to Mr O to transfer his DB scheme benefits was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr O was likely to obtain overall lower retirement benefits and in my view, there were no other particular reasons which would justify a transfer and outweigh this. Mr O shouldn't have been advised to transfer out of the scheme because of concerns about the stability of his employer and the DB scheme, concerns that DSCL could and should have reassured him about. And the potential for higher death benefits wasn't worth giving up the guarantees associated with his DB scheme.

So, I think DSCL should've advised Mr O to maintain his choice to join the BSPS2.

Of course, I have to consider whether Mr O would've gone ahead anyway, against DSCL's advice. DSCL argues Mr O was insistent from the start because he wanted to take advantage of the enhanced CETV, he was concerned about the stability of his employer and the DB scheme, and he'd already been told to transfer by a union representative and an adviser paid for by the BSPS trustees. And Mr O had previously approached other advisers but they wouldn't advise him because he was insistent.

However, I've not been provided with any documentary evidence to support DSCL's argument that Mr O was advised to transfer by a union representative or another adviser. And Mr O says he doesn't recall being given any pensions advice by a union representative, and they wouldn't have been authorised to give that advice in any case and could only have referred Mr O to an authorised firm such as DSCL. Mr O says the panic and rumours amongst his colleagues was the reason he sought advice from DSCL.

Having carefully considered all of this, I'm not persuaded that Mr O would've insisted on transferring out of the DB scheme, against DSCL's advice. I say this because Mr O was an inexperienced investor with a 'moderate' ATR at most, and this pension accounted for the majority of his retirement provision – he had little capacity for loss. Even if Mr O came to DSCL with misconceptions and preconceived ideas about transferring out of the DB scheme, DSCL should have provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests. Had it done so, I think Mr O would've accepted that advice.

I'm not persuaded that Mr O's concerns about his death benefits, his employer and the DB scheme were so great that he would've insisted on the transfer 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. If DSCL had explained that Mr O could meet all of his objectives without risking his guaranteed pension, I think that would've carried significant weight. So, I don't think Mr O would have insisted on transferring out of the DB scheme.

In light of the above, I think DSCL should compensate Mr O for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology. And it is the benefits available to Mr O under the BSPS2 at age 65 that DSCL should use for comparison purposes.

DSCL has argued that Mr O should purchase an annuity to mitigate his financial loss. But ultimately the regulator has set out what it deems to be appropriate redress to put right instances of unsuitable defined benefit pension transfer advice. And I see no reason to depart from this in the circumstances of this complaint.

I'm satisfied DSCL had caused Mr O some unnecessary distress in discovering that its unsuitable advice might have led to a significant financial loss. I think the £300 previously suggested by our Investigator is fair and reasonable compensation for this.

Putting things right

A fair and reasonable outcome would be for the business to put Mr O as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr O would have most likely have maintained his choice to join the BSPS2 if suitable advice had been given.

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

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

This calculation should be carried out using the most recent financial assumptions in line with PS22/13 and DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr O's acceptance of the decision.

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

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

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

DSCL should also pay Mr O £300 for the distress this matter has caused him.

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

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

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

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

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

David Stock & Co Limited should also pay Mr O £300 for the distress the matter has caused him. And David Stock & Co Limited should provide details of its calculations to Mr O in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 25 October 2023.

Ailsa Wiltshire
Ombudsman