

## **The complaint**

Mr S complains that the advice Davies Craddock gave him to transfer out of his defined benefit (DB) pension wasn't suitable.

Professional representatives have brought this complaint on Mr S' behalf. But for ease of reading, I'll refer to the representatives' comments and actions as being Mr S'.

## **What happened**

- Mr S was a member of his former employer's DB pension scheme from about 1966 until around 1989.
- In 1990, Davies Craddock, (a company that Mr S had already had some dealings with) offered to review his pension arrangements.

According to the information that Mr S has given us (Davies Craddock hasn't given us its business file relating to the advice), his circumstances at the time of the advice were:

- He was 39 years old and was married with one child.
- He and his wife were both in good health.
- He owned his own home and had an outstanding mortgage of around £11,000.
- He had no savings.
- Death benefits available through his DB pension were important to him.
- He wasn't willing to take any risks with his pension (his only retirement provision) and following a transfer, his pension funds were only to be used to support his retirement.

The adviser recommended that Mr S transfer his DB pension to a personal (with profits) pension with a company I'll refer to as R (the pension was initially transferred to a different company and R later became responsible for the policy). But Mr S says that Davies Craddock didn't discuss the risks and benefits with him. He says he went ahead with the transfer because the adviser said he'd be able to retire at age 55 when his DB scheme's normal retirement age was 65.

In February 1999, Davies Craddock wrote to Mr S to invite him to take part in an industry wide review 'the pensions review' set up by the regulator. It sent a further letter about this in March 1999. Mr S says he didn't receive the letters as they were sent to a previous address.

Mr S says he spoke to a former colleague in late 2021 about their respective pension entitlements. Mr S' colleague who had remained in the DB scheme, was receiving more in pension benefits than Mr S was entitled to from his personal pension. This alerted him to the fact that the transfer advice might not have been suitable for him. He also saw an advert in early 2022 about pension mis-selling and sought professional advice. Through his representative, Mr S asked Davies Craddock to review the sale of the policy.

It responded in July 2022. In summary, it said that Mr S hadn't notified it of a change of address, so it sent pension review letters in February and March 1999 to his last known

address in line with the regulator's guidelines. Davies Craddock said it was unable to deal with Mr S' complaint.

Mr S complained to the Financial Ombudsman Service later in 2022, as he wasn't happy with Davies Craddock's response. In reply to our requests for information, Davies Craddock said the complaint had been made too late. One of our Investigators looked into the complaint and gave her opinion about whether Mr S had made it in time. She concluded that he had. Davies Craddock disputed the Investigator's findings, so the matter came to me to decide. I also decided that Mr S had made his complaint in time, so I said it was one that we could consider. Our Investigator then went on to consider the merits of Mr S' complaint. As we still don't have Davies Craddock's business file relating to the advice, she based her assessment largely on the information Mr S gave us. She said:

- She didn't have evidence to suggest that Davies Craddock produced the documents typically required with advice about a DB transfer.
- In the absence of such documents, she couldn't be satisfied that Davies Craddock's advice met Mr S' objectives and that he could withstand the risks associated with transferring.
- She wasn't persuaded the pension transfer was in Mr S' best interests. Whilst recognising that potentially retiring at age 55 was a "*nice thought*" the Investigator wasn't satisfied that was reason enough for Mr S to transfer the valuable benefits from his DB pension.

The Investigator set out her recommendations about how Davies Craddock should put things right.

Davies Craddock didn't agree. It said it was involved in a similar situation in 2010, which also led to a complaint being made to the Financial Ombudsman Service. It said the Ombudsman involved in that case concluded that the complaint hadn't been made in time. It asked for the decision in Mr S' case to be reconsidered and said it expected the complaint to be "*thrown out*" in line with previous guidelines. The matter has been passed back to me to decide.

### **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 acknowledge Davies Craddock's strength of feeling and note its further comments about why it believes this isn't a complaint we should look into. I've already sent it and Mr S a separate decision explaining why I'm satisfied we have the authority to look into Mr S' complaint. And in the absence of any new information or evidence from Davies Craddock, nothing it's said causes me to change my mind about that.

However, given Davies Craddock's comments about other similar situations and decisions issued by the Financial Ombudsman Service in 2010, I will say here that my role is to assess the evidence in relation to this *specific* complaint. I can't comment on other situations or decisions that Davies Craddock might think are similar to this. So, as I've already determined why we have authority to look into Mr S' complaint and I haven't been given any new information or evidence suggesting otherwise, I'm not going to review that decision further. I'll therefore focus on the merits of Mr S' complaint here.

Davies Craddock hasn't given us its business file concerning the advice it gave to Mr S back in 1990. But I'm satisfied we've given it sufficient time and opportunity to do so and have responded to its communications on the matter. Mr S has given us his recollections, which

provide helpful context to his personal circumstances at the time of the advice. However, in the absence of all of the information and evidence I'd generally expect to see in a case like this, it naturally makes things more difficult to determine. So, where necessary, I've based my opinions on the balance of probabilities, that is, what I think is most likely to have happened.

#### *What was Davies Craddock required to do?*

In her assessment, our Investigator pointed to the more recent regulations and guidance in place concerning DB transfers and referred to the regulator as the Financial Conduct Authority. It's worth saying here that the regulatory framework has changed over time as have the organisations responsible for financial regulation. At the time of this advice, around 1990, it was actually the Life Assurance and Unit Trust Regulatory Organisation (Lautro) and the Financial Intermediaries, Managers and Brokers Regulatory Association (FIMBRA) which were responsible for regulating advising firms. And whilst it's not clear which specific regulator Davies Craddock came under, I understand that both gave broadly similar advice in relation to DB transfers. Further, although the regulators' guidance has been further developed over time, the underlying principles are largely unchanged from when Davies Craddock gave Mr S advice in 1990.

Those include that firms giving advice to transfer out of DB schemes needed to ensure that they took reasonable steps to gather information about their client's personal and financial circumstances. That was to help ensure their advice was suitable and genuinely in the consumer's best interests. The guidance also suggested that the majority of consumers would be better off by remaining in their DB scheme. So that's the backdrop against which I've considered whether Davies Craddock acted fairly and reasonably and gave suitable advice in Mr S' particular case.

#### *Was Davies Craddock's advice suitable?*

As I've mentioned, Davies Craddock hasn't provided any documentation which shows the basis upon which it made its recommendation for Mr S to transfer out of his DB scheme. That means I haven't seen anything which sets out its analysis of the advantages and disadvantages of investing in a personal pension against remaining in the DB scheme.

Mr S recalls that one of the advantages Davies Craddock mentioned to him was that he'd be able to retire at age 55 when the normal scheme retirement age for his DB pension was 65. I have no reason to disbelieve Mr S' recollection here. And I can certainly appreciate why the prospect of retiring ten years earlier would be enticing for anyone. But that needed to be considered in the context of Mr S' wider circumstances and financial position.

At the time of this advice, Mr S wasn't even forty years of age. So, it's not clear to me why he needed to do anything with his pension at that point. And even if he was intent on retiring at age 55 based on what Davies Craddock told him, that was still around 15 years away. Circumstances can and do change in a period of 15 years. So, even if this was a key factor in Davies Craddock believing its advice was suitable, at best, I think it should have said it would be in Mr S' best interests to leave his guaranteed DB scheme funds untouched and revisit the position as he approached age 55. And at that point he could decide if a transfer was in his best interests. Mr S had no reason to make that decision when he was still many years from retirement.

On top of that, Davies Craddock ought to have known that DB pensions included very valuable guarantees. And Mr S has told us that his DB pension was his only pension provision. So, I think there would need to be fairly compelling reasons for Davies Craddock

to recommend he transfer out of his DB scheme. In the absence of any evidence to show that, it's difficult to see what those compelling reasons were.

Mr S has also indicated he wasn't prepared to take any risk with his pension. Therefore, a secure DB pension that was subject to regular increases and wasn't exposed to the volatilities and risks associated with investment performance would seem more suited to him. I also need to think about Mr S' capacity to absorb any investment losses. Mr S said he didn't have any savings to fall back on should his investments not perform as expected. So, that would seem another factor in favour of staying in the DB scheme. That being the case, again, in the absence of further evidence to suggest otherwise, it's difficult to see why Davies Craddock felt transferring to a personal pension was in Mr S' best interests and was therefore a better option for him. So, I don't think Davies Craddock's advice to transfer his safeguarded benefits from his DB Scheme to a personal pension was in Mr S' best interests. And, on balance, I think Mr S would have remained in his DB scheme had he received suitable advice. I say this because I've seen no evidence to indicate that Mr S had any specific financial knowledge or expertise. I think a recommendation not to transfer this DB pension, along with a well-reasoned explanation why not would have been persuasive for Mr S. He sought Davies Craddock's expertise in this area, and in the same way he trusted its recommendation to transfer, I think he would similarly have followed advice not to. Mr S had no immediate or pressing objective that required this transfer, and no reason to reject a recommendation to retain his DB benefits.

Taking all of these factors together, I'm not satisfied that Davies Craddock's advice was suitable for Mr S. Therefore, I'm upholding this complaint. I've set out below what Davies Craddock needs to do to put things right.

### **Putting things right**

A fair and reasonable outcome would be for Davies Craddock to put Mr S as far as possible, into the position he would now be in but for the unsuitable advice. As I said above, I consider Mr S would have most likely remained in the occupational pension scheme if suitable advice had been given.

Davies Craddock 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 S has retired, so, compensation should be based on the scheme's normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

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

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

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

Redress paid to Mr S as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, Davies Craddock 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 S' likely income tax rate in retirement – presumed to be 20%. So, making a notional deduction of 15% overall from the loss adequately reflects this.

Where I uphold a complaint, I can award fair compensation of up to £170,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £170,000, I may recommend that the business pays the balance.

### **My final decision**

Determination and money award: I uphold this complaint and require Davies Craddock to pay Mr S the compensation amount as set out in the steps above, up to a maximum of £170,000.

Recommendation: If the compensation amount exceeds £170,000, I also recommend that Davies Craddock pays Mr S the balance.

If Mr S accepts this decision, the money award becomes binding on Davies Craddock.

My recommendation would not be binding. Further, it's unlikely that Mr S can accept my decision and go to court to ask for the balance. Mr S 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 S to accept or reject my decision before 17 November 2023.

Amanda Scott  
**Ombudsman**