

## **The complaint**

Mr H complains about the advice given by David Stock & Co Limited ('DS&C') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme, the British Steel Pension Scheme ('BSPS') to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

## **What happened**

Mr H was a deferred member of the BSPS and held benefits in the scheme relating to a period of employment between 1995 and 2013.

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

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

The RAA was signed and confirmed in August 2017 and the agreed steps were carried out shortly after. And in October 2017 members of the BSPS were sent a "time to choose" letter which gave them the options to either stay in the BSPS and move with it to the PPF, move to the BSPS2 or transfer their BSPS benefits elsewhere. Updated transfer valuations were also provided by the BSPS trustees to qualifying members, reflecting the improved funding position – with the cash equivalent transfer value ('CETV') of Mr H's pension benefits being £229,905.30.

Mr H approached DS&C for advice about his deferred pension benefits. It appears limited details were provided about his circumstances when he did so – in particular that he was 46, married, with three children.

On 3 January 2018, DS&C sent Mr H an "initial report". This was issued before Mr H had met with DS&C. This letter summarised a lot of DS&C's general observations about the attitudes and motivations of scheme members. It talked about members generally considering the involvement of the sponsoring employer with the BSPS2 being "dangerous". DS&C said after speaking to a number of members of the BSPS, the majority had chosen to join the BSPS2 or transfer. It summarised that the reason other members had generally asked to discuss a transfer were to have control over their pension, greater flexibility and access to the lump sum death benefits a transfer would enable. And it implied Mr H's motivations were the same.

The letter also talked about the sponsoring employer's new defined contribution ('DC')

pension scheme and indicated Mr H was a member of it – although this was incorrect as he no longer worked for that employer. The limited analysis in relation to Mr H referred to the critical yield – the level of growth required of a new pension to enable Mr H to purchase benefits at retirement equivalent to those he was giving up. The letter said in Mr H's case this was 4.74% and that this was reasonably acceptable for someone with an attitude to risk of 4-5 on a scale of 1-10. And DS&C said it had assumed for the purpose of the report that Mr H's attitude to risk would be 'moderate / balanced' or 4-5.

DS&C said, if Mr H understood the advantages and disadvantages of a transfer, it could assist him in selecting an investment fund that suited him. DS&C said it could recommend a pension from several providers but favoured a specific provider. It also said, while the investment could be managed in house it felt a discretionary fund manager ('DFM') could be used and again, DS&C tended to favour this and could arrange for Mr H to meet with the DFM they use. The letter concluded by saying if the report met with Mr H's approval it would arrange a meeting to complete the relevant paperwork to enable the transfer.

A meeting appears to have taken place between Mr H and DS&C on 13 January 2018. A more detailed fact-finding document was completed. Amongst other things this recorded that Mr H was in good health, employed full time and had been with his current employer for approximately five years. In addition to his BPS benefits Mr H had a pension with his current employer and a third pension, to which he'd made contributions for around three years.

DS&C noted having control of his pension was something Mr H was interested in and that he was worried the BPS2 could also encounter issues in the future. DS&C also said flexibility was important to Mr H and that he hoped to retire at age 60. But there was nothing recorded about his expected needs in retirement. The fact-find also included an assessment of Mr H's attitude to risk, which was deemed to be 'very cautious to cautious' or 2 on a scale of 1-10.

At the same meeting, forms were completed to enable a transfer to a personal pension with the provider DS&C previously said it preferred. DS&C also wrote to the BPS trustees, confirming it had provided Mr H with regulated DB transfer advice.

I understand the transfer went ahead and DS&C subsequently introduced Mr H to a DFM who went on to assist with the management of his pension. In meeting notes with the DFM it was recorded that Mr H didn't realistically expect to retire until age 65.

DS&C wrote to Mr H on 1 February 2023, via a representative. It said it wanted to make him an offer to resolve any and all claims in relation to the advice he'd received. DS&C said it maintained that Mr H had wanted flexibility. However, it had put aside the issue of whether the advice was suitable and had carried out a calculation to establish if Mr H had incurred a loss as a result of the advice. DS&C said the calculation indicated Mr H hadn't incurred a loss. That notwithstanding, it said it'd pay him £50 in settlement of his claim.

Mr H asked our service to look into the matter as he didn't think this offer was acceptable. One of our Investigators considered it. He didn't think DS&C's advice was in Mr H's best interests. He noted that the regulator, the Financial Conduct Authority ('FCA'), had developed a BPS-specific redress calculator. The calculator was developed for the BPS consumer redress scheme. But it could still be used to carry out calculations in non-scheme cases, like Mr H's complaint with the Financial Ombudsman Service. And the Investigator thought it would be fair for DS&C to carry out a further calculation, using this calculator, to establish if Mr H had suffered a financial loss as a result of its advice. He also thought DS&C should pay the £50 it had previously offered to acknowledge the trouble Mr H had to go to in raising his concerns.

I understand DS&C agreed and it carried out a redress calculation, using the FCA's BSPS-specific redress calculator. This indicated Mr H had not incurred a loss as a result of the transfer. DS&C also said it had recently issued a cheque to Mr H for £50.

Our Investigator explained to Mr H that he had reviewed the calculation and believed that this had been carried out correctly. We didn't receive any response from Mr H. As a result, in order to conclude matters, I'll now make 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.

When it initially responded to Mr H, DS&C said it maintained that he had wanted flexibility – suggesting it still thought the advice was suitable. But it said it would put the issue of suitability aside and make an offer to resolve matters. And when the Investigator said they thought the advice was unsuitable, DS&C didn't give any indication that it disagreed with this and agreed to carry out a calculation, in line with the Investigator's recommendation. So, it appears that the suitability of the advice is no longer disputed and as such I don't see the need to address this in detail.

For the avoidance of doubt though, I agree with the Investigator that the advice was unsuitable. And I'll briefly explain why.

DS&C said the critical yield to match the benefits Mr H would've received under the BPS2 at age 65 was 4.74% and was acceptable for someone with a 'moderate / balanced' attitude to risk. But that was before it had spoken to Mr H. It then assessed that he had a 'very cautious to cautious' attitude to risk. But I can't see that DS&C revisited or made any further assessment once that information was recorded. And based on his attitude to risk, the relevant discount rate and the regulator's standard projections at the time, I don't think Mr H was likely to consistently achieve this level of growth if he transferred and invested in line with his attitude to risk.

DS&C also didn't analyse the critical yields in respect of early retirement – despite indicating this, and flexibility to achieve this, was something Mr H was interested in. And the rate of return required to replicate benefits for retiring earlier was likely to be even higher - because benefits would have to be paid for longer and the investment horizon to retirement was shorter.

Because of these things I think Mr H appeared likely to receive benefits of a lower value by transferring. Which, in my view, means a transfer wasn't in his interests.

DS&C said Mr H was interested in having flexibility and retiring at age 60. But it recorded no information about his expected income needs or plans to support that having flexibility was something he needed. And this appears to instead have been a generic objective. I'd also note that Mr H could've taken benefits from age 60 under the BPS2 and the PPF.

In addition, when speaking to the DFM, it appears Mr H said he didn't realistically expect to retire until age 65. I'm also conscious that Mr H was only 46 at the time of the advice and was a significant number of years away from when he thought he might retire. His circumstances, objectives or aims could've changed over the years that followed. And I don't think his plans for retirement were set in stone. So overall, I think it was too soon for an irreversible decision to transfer out of his DB scheme for flexibility in his pension arrangements to be considered in his best interests. Particularly when the BPS2 would've still provided the option to transfer out at a later date if his circumstances required it.

DS&C said Mr H was interested in having control of his pension. But I can't see that Mr H had an interest in or the knowledge to be able to manage his pension funds on his own. And indeed, the advice was on the understanding he'd take ongoing advice, at a cost – which he wouldn't have incurred by remaining in the scheme. So, I think him having control of his pension was somewhat overstated as a reason for transferring.

I don't think there was anything to support that the BSPS2 and its future prospects ought to have given Mr H cause for concern. It was separate from his former employer and concerns about this seem to have been driven by the negative sentiment the consultation had created. And I don't think DS&C did enough to objectively address this – which it should've done as part of its role of giving impartial, objective advice.

Overall, I haven't seen persuasive reasons why it was clearly in Mr H's best interest to give up his DB benefits. Nor have I seen anything that leads me to think Mr H would've gone against advice not to transfer, had it been explained that this wasn't in his best interests. So, I think the advice DS&C gave was unsuitable.

As I've explained though, DS&C agreed and now has taken the steps to settle the complaint which the Investigator recommended. So, what is left for me to decide is if this is fair, as no agreement appears to have been reached.

### **Putting things right**

The aim is to put Mr H back in the financial position he would have been in at retirement had he remained in the DB scheme. DS&C has now carried out a calculation using the specific BSPS calculator provided by the FCA which is what I would expect it to do in the circumstances.

The calculator uses economic and demographic assumptions, which the FCA updates on a regular basis, to calculate how much a consumer needs in their pension arrangement to secure equivalent BPS retirement benefits that they would have been entitled to under either BPS2 or the PPF (as uplifted to reflect the subsequent buy-out), had they not transferred out.

If the calculation shows there is not enough money in the consumer's pension arrangement to match the BPS benefits they would have received, the shortfall is the amount owed to the consumer. If the calculation shows there is enough money in the consumer's pension arrangement, then no redress is due. That means, even though we might have found that the transfer wasn't in a consumer's best interests, it doesn't automatically mean that they are worse off or will be entitled to compensation. That is something the calculation will determine.

The BPS calculator has been developed by actuaries and is programmed by the FCA with benefit structures of the BPS, BPS2 and PPF (including the impact of the subsequent buy-out) and relevant economic and demographic assumptions which are updated regularly. This information can't be changed by firms.

The calculator also makes automatic allowances for ongoing advice fees of 0.5% per year and product charges of 0.75% per year which are set percentages by the FCA.

I have checked the inputs that were entered by DS&C which are personal to Mr H. These include his personal details, his individual benefits from the BPS at the date he left the scheme and the value of his personal pension. The calculation also assumes that if he had not been advised to transfer his benefits from the BPS, he would have moved to the BPS2 and that he would have taken his DB benefits at age 65. This is in line with the

Investigator's recommendation and what the FCA suggests will usually be a reasonable assumption – and I think this is fair here.

Overall, based on what I've seen, DS&C has generally carried out the calculation appropriately. I'm satisfied it's done so in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in the FCA's policy statement PS22/13 and set out in their handbook in DISP App 4:

<https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter>.

The calculation in Mr H's case shows that there is no shortfall to his pension and that he has sufficient funds to be able to replicate his DB benefits in retirement. So, I'm satisfied that Mr H has not suffered a financial loss by transferring his pension.

I understand that DS&C has also sent Mr H a cheque for £50, in line with what it had previously offered. Mr H initially indicated he didn't think this was sufficient. The Investigator thought this was fair to address the trouble Mr H had been caused. The first indication of Mr H having any concerns about the advice he'd received was in early 2023. So, I don't think I can reasonably say he's been caused ongoing distress. DS&C carried out a redress calculation when the complaint began, which it said indicated he hadn't incurred a loss. I appreciate that Mr H felt he wanted our service to consider his complaint. But this, and the recent calculation, which has again shown he hasn't incurred a loss, ought to have provided reassurance to him, while enquiries were ongoing. And so, taking everything into account here, I think the offer the DS&C has already made, and paid to Mr H, is fair and reasonable. So, I don't require it to do anything more.

### **My final decision**

I uphold this complaint as I consider Mr H was provided unsuitable advice. But I think David Stock & Co Limited has already taken appropriate steps to address this and so I don't require it to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 16 February 2024.

Ben Stoker

**Ombudsman**