

The complaint

Mr S complains about the veracity of the loss assessment carried out by David Stock & Co Limited (“DS&C”) in connection with the FCA’s consumer redress scheme for the British Steel Pension Scheme (“BSPS”) – to make my findings easier to follow, I’ll refer to this as the “redress scheme”.

What happened

The sequence of events isn’t in dispute, so I’ve only set out a brief summary of what happened.

Mr S had built up benefits in the BSPS between September 1995 and March 2017. The BSPS was a defined benefits (“DB”) pension scheme that provided a guaranteed lifetime income to members.

In September 2017, the BSPS issued a transfer value of £308,144.35 to Mr S – this was the capitalised value of his DB pension if he transferred his entitlement to a new pension arrangement. In October 2017, DS&C advised Mr S to transfer the value of his DB pension to a self-invested personal pension (“SIPP”). The SIPP provider received a transfer value of £308,144.35 in December 2017. At that time Mr S was aged 38.

In March 2021, Mr S transferred the value of his SIPP to a new arrangement. From that point onwards, DS&C no longer acted as Mr S’s representative or provided him with ongoing advice in connection with his pension.

The redress scheme

In November 2022, the FCA announced its final rules (set out in PS22/14) for the redress scheme after it had identified that many former members of the BSPS were given the wrong advice to transfer away from the scheme. The redress scheme started in February 2023. The rules for the redress scheme required firms to identify scheme cases following certain criteria. Once identified, firms had to review the advice given to former BSPS members in these cases – and then tell them if the advice was suitable or not. As part of the review process, firms were required to use the FCA’s BSPS Defined Benefit Advice Assessment Tool (“DBAAT”) which led to one of two outcomes:

- The advice was rated as “suitable” and the case closed; or
- The advice was rated as “unsuitable” – if so, the case progressed to a calculation and the payment of redress if it was shown the consumer had suffered a financial loss.

If the consumer disagreed with the outcome, they could ask the Financial Ombudsman Service (“FOS”) to look at whether the review was carried out correctly in line with the redress scheme rules.

DS&C’s review of the advice it gave Mr S

In March 2023, DS&C wrote to Mr S to tell him that his case didn't meet the requirements to be included in the redress scheme and that it wouldn't be taking any further action. This was because he had previously complained about the pension transfer advice.

Mr S didn't agree and so referred the matter to FOS. One of our investigators expressed her view to DS&C that it hadn't applied the scheme rules correctly when it deemed Mr S's case as out of scope for the redress scheme. She explained why to DS&C. It accepted our investigator's view. It then went on to assess Mr S's case under the redress scheme and carried out a calculation to establish if he had suffered a financial loss.

In December 2023, DS&C wrote to Mr S to confirm the outcome of the calculation. This showed that he hadn't suffered a financial loss as at 1 October 2023. It stated:

"With regards to the above matter, I am pleased to advise that we have completed the redress calculation and have enclosed the outcome for your information. To give a fair assessment, the calculation has been based on the initial transfer value which was £305,062.91 [minus the initial advice fee]. The valuation of your plan being £383,179.09 when you left our agency on 1st March 2023.

The calculation shows a surplus figure of £25,336.79, a figure that would be greater if we had completed the calculation using the £383,179.09 figure when you left our agency".

Mr S didn't agree with the 'no loss' outcome presented by DS&C. He contacted FOS again. One of our investigators expressed his view to DS&C that it hadn't applied the scheme rules correctly when calculating whether any redress was due to Mr S. The investigator noted that while DS&C had correctly used 1 October 2023 as the valuation date, it incorrectly used the transfer value of £305,062.91 [minus the initial advice fee] from September 2017. The investigator told DS&C that it was required to use the value of Mr S's pension plan as at 1 October 2023 (being the first day of the quarter in which it carried out the redress calculation). To put things right, the investigator recommended that DS&C re-run the calculation using the correct value of Mr S's pension plan in line with the redress scheme rules.

DS&C didn't accept our investigator's view. It stated:

"[Mr S] left my firm with a fund value of £383,397.71 on 1st March 2021. That is where our relationship ended. Therefore how can my firm be responsible for losses following the transfer away from my firm. That is not right or proper and therefore we request that an Ombudsman review your decision.

My firm would meet compensation for its failure; however, my firm did not fail [Mr S] as his investment, transfer from BSPS grew significantly. My firm dispute vigorously it can be held liable or responsible in any way for the losses [Mr S] has incurred since leaving my firm's service. [Mr S] has not complained about the fall in the value of his pension savings, he has merely asked for the calculations to be confirmed as correct.

For the avoidance of any doubt my firm disputes being liable for any losses incurred following [Mr S's] transfer to his new adviser."

This complaint has now been allocated to me to review and decide. This is the last stage of our process.

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.

DS&C previously accepted that the pension transfer advice it gave to Mr S was in scope for the redress scheme. In December 2023, it carried out a calculation that generated a 'no loss' outcome. As a result, it doesn't believe any redress is due to Mr S. This complaint is specifically about whether DS&C carried out the calculation in line with the redress scheme rules. DS&C thinks it did. But I have a different view, as explained below.

I share our investigator's opinion that DS&C made an error in its calculation when it used the figure of £305,062.91 as at 1 October 2023. That figure was the transfer value [minus the initial advice fee] quoted by the BSPS in September 2017. It wasn't the value of Mr S's pension plan as at 1 October 2023. There's no dispute about this.

DS&C believes it shouldn't be held liable for the investment performance of Mr S's pension plan after 1 March 2021. From that point onwards, DS&C no longer acted as Mr S's representative or provided him with ongoing advice in connection with his pension. But this doesn't mean it can choose to ignore the redress scheme rules and decide to assess Mr S's financial loss in a different way. DS&C is required to follow the redress scheme rules regardless of its own views.

The overarching purpose of the BSPS redress calculator is to compare the position the consumer is in with the position they would have been in if the firm had complied with the suitability requirements and benefits remained preserved in the DB pension scheme. To do this, DS&C must use the value of Mr S's pension plan (or 'DC pension arrangement') as at the valuation date which is the first day of the quarter in which it carries out the calculation. This is confirmed in the redress scheme rules. I think it's relevant to highlight the following:

The definition of 'DC pension arrangement' is confirmed in CONRED 4 Annex 21 13.1 (5) R:

*'DC pension arrangement' means any pension arrangement holding the value of the consumer's pension benefits which originated from the BSPS, **including where the arrangement has been subsequently switched to a new arrangement**; [my emphasis added]*

This section clearly instructs DS&C to use the value of Mr S's pension plan that currently holds the value of the original BSPS transfer value. The fact that Mr S transferred to the new pension plan in March 2021 is irrelevant and doesn't 'draw a line in the sand' in terms of the value to be used in the calculation, as DS&C believes.

DISP App 4.3.21R states:

"The valuation date must be the first day of the quarter (for calculations undertaken within that quarter)"

CONRED 4 Annex 21 13.1 (12) R states:

"'quarter' is the period of three months commencing 1 January, 1 April, 1 July and 1 October in each year"

Putting things right

DS&C must do the following:

1. Calculate and pay any redress due to Mr S in line with the redress scheme rules; and
2. Ensure that any relevant records and reporting to the FCA are updated accordingly to reflect the change in outcome on Mr S's case.

For the avoidance of doubt, for step (2) above, DS&C must use the value of Mr S's current pension plan attributable to the original transfer value received from the BSPS as at the first day of the quarter in which it carries out the redress calculation. DS&C will need to obtain the value of Mr S's pension plan at the correct valuation date to enable it to carry out the calculation accurately.

My final decision

I uphold this complaint. I direct David Stock & Co Limited to follow the steps set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 27 September 2024.

Clint Penfold

Ombudsman