DRN-3483646

The complaint

Mr K complains about the advice given by D C Financial Limited ('DCF') 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 believes this has caused a financial loss.

What happened

In March 2016, Mr K's employer announced that it would be examining options to restructure its business, including decoupling the BSPS (the employers' DB scheme) 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 private pension arrangement.

At the time the BSPS scheme closed to new accruals in March 2017, Mr K had 5 years and 8 months of pensionable service with his employer which gave him a total (index linked) pension of £3,501.44 per year (forecast to be £8,904 per year at age 65 or £6,453 at age 60). After the DB scheme closed to new accruals in March 2017, Mr K joined his employer's Defined Contribution ('DC') scheme.

In September 2017 Mr K had received a Cash Equivalent Transfer Value ('CETV') from the DB scheme of £67,495.80, valid for 3 months.

DCF completed a fact-find in late August 2017 to gather information about Mr K's circumstances and objectives. Mr K's circumstances at the time were noted as follows:

- He was aged 26, was getting married the following month and had one child aged almost two.
- He was employed as a team member earning £48,000 per year. His partner was working part-time and earned £800 per month.
- All his monthly disposable income of £290 was all being used to save for his wedding. Where his future wife's monthly income was going wasn't documented.
- His house was valued at £92,000 with an outstanding mortgage of £72,000 with 25 years to run.
- He was paying £400 per month for loans/cards (repayment term undocumented).
- He had an undisclosed amount in savings which was being used for his wedding. He had no other savings or investments.
- He was recorded as being a member of his employer's DC scheme, making contributions of 6% per year along with employer contributions at the rate of 10% per year; the fund was valued at approximately £2,000. His partner was noted as being a member of her occupational scheme but there were no details about contribution rates or fund value.
- That he considered himself to have limited knowledge of financial terms and no experience of investment. His investment objectives were noted as 'growth up until retirement'.

- His preferred retirement age was 57-60 and he estimated he would need £1,800 a month as income in retirement.
- That he didn't want to risk his benefits being reduced in the future by either the Pension Protection Fund ('PPF') or the BSPS2.
- He wanted to take control of his pension away from his employer and liked the idea of flexible death benefits and being able to leave his remaining pension fund to his children.

DCF also carried out an assessment of Mr K's attitude to risk ('ATR'), which it deemed to be 'moderate' or a risk level of 5 on a scale of 1 to 10. It also thought he had the capacity for loss as determined by his ATR.

In October 2017, members of the BSPS were sent a "Time to Choose" letter which gave them the option 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).

A transfer value analysis report (TVAS) was produced on 2 November 2017 which set out the amount of investment growth (known as the 'critical yield') required by the transferred funds to be able to match the benefits being given up in the BSPS. It said Mr K's pension would need to achieve growth of 6.3% each year to match his full scheme income at age 65 or 6.69% to match his full scheme income at age 60. It also stated that Mr K's pension would need to grow by 4.98% to match the benefits he could receive from the PPF at age 60.

On 8 November 2017 DCF provided Mr K with its suitability report and advised him to transfer his pension benefits into a personal pension and invest the proceeds with a provider ('L') in 19 different funds to be actively managed by DCF. The suitability report said the reasons for this recommendation to Mr K were, in summary:

- That he wanted to have a flexible income in retirement to supplement his state pension.
- That he wanted the opportunity to vary income in retirement to meet changing circumstances.
- He didn't want to stay in (his employer's pension scheme) until age 65 and wanted the flexibility to retire before then without penalty.
- To have access to 25% of his fund as tax-fee cash (TFC)
- The uncertainty about the BSPS, about benefits being cut further, about the PPF and the new BSPS2. Concerns over the new BSPS2 having benefits cut further.
- Transferring his benefits would remove them from the control of his employer who he didn't trust.
- Flexible death benefits.

Mr K accepted the recommendation and signed the transfer forms on 7 November 2017. The forms were submitted to L and Mr F signed a declaration on 10 November 2017 to say that he had received and read the suitability report. DCF were remunerated with an initial advice fee of £1,687.40 and an annual ongoing adviser fee of 1% of the fund value. L also charged an annual fee of 0.25%. The transfer took effect in early February 2018.

In April 2021 Mr K's personal pension was valued at £78,252.

Also in April 2021, Mr K's representative complained to DCF that the advice he'd been given to transfer out of his DB scheme had been unsuitable and that the transfer shouldn't have been recommended in his circumstances as they were at the time.

DCF looked into Mr K's complaint but didn't agree that it should be upheld. It said the advice it had given Mr K was suitable, was in his best interests had met his needs and objectives. It said Mr K's needs and objectives could not have been met by remaining in BSPS and transferring to the PPF or BSPS2. And it said Mr K was happy to take an investment risk with the aim of improving his benefits. DCF also said that, by transferring, Mr K could also take early retirement without his pension being subject to early actuarial reductions and that he also now had death benefits structured to his wishes.

Unhappy with the outcome of DCF's investigation, Mr K complained to this service. Our Investigator looked into Mr K's complaint and recommended that it was upheld. He said he thought the transfer wasn't suitable for Mr K because it wasn't financially viable in that it was evident from the growth rate identified that he would attain significantly lower benefits at retirement than had been available under the BSPS. Our Investigator went on to say that Mr K should have been advised to remain in the BSPS and then, when the BSPS2 became available he would have opted to be transferred into this. Our Investigator also said that whilst the suitability report contained warnings about the risks of transferring this didn't mean an unsuitable recommendation could be made suitable.

Our Investigator went on to say that any flexibility Mr K required could have been met by the DC scheme he was now a member of and which would accrue benefits over the next 30+ years. So he said that 'flexibility' wasn't a suitable reason to transfer Mr K's DB scheme, particularly when he had so long to go until retirement.

Our Investigator recommended that DCF should compensate Mr K for the losses he incurred by transferring his DB pension and that compensation should be based on him having opted to join the BSPS2.

Mr K's representative replied to say that it thought Mr K's normal retirement date of age 65 should be used in any redress calculation.

DCF responded to say it disagreed with our Investigator's findings which, it said, were unfair and unreasonable. It made the following comments:

- The BSPS2 was far from certain at the time so it plainly could not have recommended a transfer. It wasn't created until 31 January 2018.
- It had provided Mr K with a list of the advantages and disadvantages of the transfer, assessed his ATR and capacity for loss and made sure he understood about investment risk and it had acted in Mr K's best interests. The Investigator failed to take into account Mr K's significant capacity for loss.
- It had advised Mr K that the critical yield may not be achievable. The only critical yield that should be used for comparison purposes was the one for the PPF so the Investigator was wrong to focus on the critical yields associated with BSPS.
- The total investment return on Mr K's fund whilst it was managing his pension was equivalent to 7.07% per year which was well in excess of the critical yield for the PPF and higher than those associated with BSPS. It is reasonable to think these returns would have continued. This shows Mr K was improving his retirement benefits as a result of the transfer.
- It questioned the relevance of using discount rates. The discount rate quoted of 4.7% was very close to the critical yield for the PPF, was around the regulator's mid-growth rate and well below the actual return on Mr K's pension. The regulator didn't require firms to consider or apply discount rates when advising consumers.
- That our Investigator had had no regard for how Mr K said he wanted to spend his income in retirement.
- Meeting the critical yield doesn't determine the overall suitability of the advice.

- Mr K wanted flexibility in retirement, was worried about the inflexibility of the PPF and wanted to be able to take TFC at age 57-60 without drawing an income at the same time.
- Mr K preferred the death benefits offered by the personal pension.
- That even if it hadn't advised Mr K to transfer he would have proceeded anyway as an insistent client.
- Mr K had four compelling reasons for accessing his pension: to retire early without actuarial reduction; to access TFC without drawing an income from his pension; to take control of his pension; to allow any unused pension to be left to his wife and children in the event of his death. Mr K would not have been able to achieve his objectives without transferring.

Our Investigator considered what DCF had said in response to his view but wasn't persuaded to change his mind about Mr K's complaint. He said that had Mr K not been advised to transfer he would not have had to rely on uncertain future investment performance to provide a retirement income. He also said the regulator, the Financial Conduct Authority (FCA), stated that the critical yield was a key consideration when advising on the transfer of a consumer's DB scheme. So he said it was appropriate to place significant emphasis on the critical yields identified in the TVAS and, he said, they indicated that Mr K would need to take significant investment risks, in excess of those he was comfortable with, just to match his BSPS benefits.

Our Investigator thought DCF's statement that the actual net return on Mr K's pension of 5.82% per year should be increased to 7.07% in order to provide a direct comparison with the critical yield was misplaced. The return of 5.82% was net of charges as were the critical yields so they provided a direct comparison. Our Investigator said the comparison of the critical yield to the benefits being given up in the BSPS formed part of the basis of DCF's recommendation to Mr K so it was entirely appropriate that these figures were referred to when assessing the suitability of the transfer.

Our Investigator also said that Mr K's retirement income requirements could have been partly met by remaining in the scheme. He said any flexibility Mr K needed at retirement could have been met provided through Mr K's DC scheme so it was clearly demonstrated that his stated objective of flexibility could have been met without the need to transfer. And, he said, Mr K's desire for control because he no longer trusted his employer could just have as easily been achieved by transferring to the PPF or BSPS2 as neither were under the control of his employer.

DCF disagreed with what our Investigator had said. It replied and stated that it was clear that Mr K was concerned about his future benefits being cut if he joined the PPF or BSPS2 and it was clear it had discussed the "Time to Choose" document with Mr K. It said Mr K's accumulated benefits only represented about 7.19% of his current employment income so there was plenty of scope to build a significant retirement fund in his DC scheme. Consequently, Mr K had the capacity for loss.

DCF also sent some further comments to our Investigator. It said any compensation calculation needed to be based on the PPF, not BSPS2 because BSPS2 didn't exist at the time the advice was given.

The complaint was referred to me to 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.

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 Business ('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 DCF'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, like our Investigator, I've decided to uphold the complaint for largely the same reasons.

The regulator, the FCA, states in COBS 19.1.6 that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, DCF should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr K's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Financial viability

DCF carried out a transfer value analysis report (as required by the regulator) showing how much Mr K's pension fund would need to grow by each year (the critical yield) in order to provide the same benefits as his DB scheme. This analysis was based on his existing BSPS scheme benefits, but Mr K didn't have the option to remain in the BSPS; he either needed to opt into BSPS2 or move with the existing BSPS scheme to the PPF.

DCF has strongly argued that BSPS2 may not have gone ahead so the only comparison it could provide was with the benefits available to Mr K through the PPF. But I think DCF overestimated the chance of this not happening; Mr K had received his "Time to Choose" pack by the time the advice was given. And details of the scheme had been provided; the BSPS2 would've offered the same income benefits but the annual increases would've been lower. Of course, it's possible this may not have gone ahead, but I still think the proposed benefits available to Mr K through the BSPS2 should've been factored in with this advice so that he was able to make an informed decision.

According to the fact-find and the suitability report Mr K wanted to retire from British Steel early – between the ages of 57-60. Mr K wasn't sure what income he would need at that stage but estimated he might need £1,800 a month. The TVAS dated 2 November 2017 set out the relevant critical yields; at age 65 it was 6.3% if he took a full pension and at age 60 it was 6.69%. Given that one of the objectives Mr K had, and one of the advantages of the transfer DCF cited, was to take 25% TFC flexibly it is notable that DCF didn't calculate the critical yield required for such a scenario at either age.

The critical yield required to match the benefits provided through the PPF was 4.98% if Mr K took a full pension at age 65 or 4.82% if he took a reduced pension and a pension commencement tax free lump sum (PCLS). At age 60 the critical yields were 5.43% and 5.28% respectively. As I've said above, Mr K remaining in his existing DB scheme wasn't an option. So, the critical yields applicable to the BSPS2 benefits should also have been provided by DCF. The lower annual increases under the BSPS2 would've likely decreased the critical yields somewhat but, I still think they would've likely been higher than those reflecting the PPF benefits, particularly at age 65.

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. 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.

The closest discount rate to the time of this transfer which I'm able to refer to was published for the period before 1 October 2017, and was 4.7% per year for 37 years to retirement. For further comparison, the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2% per year.

I've taken this into account, along with the composition of assets in the discount rate, Mr K's attitude to risk and also the term to retirement. DCF confirmed it assessed that Mr K was likely to be a moderate risk investor given he had over 37 years before he expected to retire, so he had the capacity to build pension funds in between and tolerate some losses.

There would be little point in Mr K giving up the guarantees available to him through a DB scheme only to achieve, at best, the same level of benefits outside the scheme. Here, the lowest critical yield was 4.82%, which was based on Mr K taking a reduced pension and a PCLS through the PPF at age 65. The critical yield if Mr K took a full pension (no critical yield having been produced for a reduced pension and TFC) through his existing scheme at age 65 was 6.3%. So, if Mr K were to opt into the BSPS2 and take the same benefits at age 65 the critical yield would've been somewhere between those figures, and likely closer to 6.3%. Given the discount rate of 4.7% and the regulator's middle projection rate of 5%, I think Mr K was most likely to receive benefits of a lower overall value than those provided by the PPF and the BSPS2 if he transferred to a personal pension, as a result of investing in line with that attitude to risk. And I am confident had DCF informed Mr K of the true value and benefits of BSPS2 and the PPF, and then advised him to remain in the BSPS, he would have accepted this and when the availability of BSPS2 arose, he would have opted to be transferred into it.

DCF says that it is unreasonable to base any findings on the discount rate because taking this into account was not required by the regulator when giving advice. While I haven't based my findings on this, I think it a reasonable additional consideration when seeking to determine what level of growth was reasonably achievable at the time of the advice. Under COBS 19.1.2 the regulator required businesses to compare the benefits likely to be paid under a DB scheme with those payable under a personal pension by using reasonable assumptions. So, businesses were free to use the discount rate as this would be considered a reasonable assumption of the likely returns. And in any event, this has been considered in tandem with the regulator's published projection rates, which providers were required to refer to. And it is this combination, along with Mr K's attitude to risk, which leads me to be believe he'd likely be worse off in retirement if he transferred out of the DB scheme.

DCF said in its suitability letter: *"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."* So it is clear to me that DCF realised that by transferring, Mr K would be unable to match the benefits he was giving up.

DCF provided analysis in the TVAS of the critical yields Mr K's pension would need to attain for retirement at ages 60 and 65 and along with analysis of how long his pension last if he drew the same income (indexed linked) as provided by his DB scheme (without taking any TFC). If he retired at age 60 his pension would run out by the time he was 89 and if he retired at 89 it would run out by the time he was 89. If Mr K been advised to remain in BSPS however and transfer to the PPF or BSPS2, his pension would never have run out, regardless of how long he lived.

I note too that the TVAS analyses the 'hurdle rate' (the rate of return required to purchase an annuity to provide benefits of equal value to the estimated benefits provided by the existing scheme assuming no spouse's pension and no index linking). The hurdle rate to age 60 was 4.42% and to age 65 was 4.56%. So only the hurdle rates are below the discount rate I have referred to above. But only by using a method of comparison that didn't match the guaranteed benefits in Mr K's BSPS, could it be argued that the DB scheme transfer was financially viable. But of course, index linking is a very valuable guarantee so I don't accept the hurdle rate to NRD at age 65 demonstrates that the transfer was suitable and in Mr K's best interests.

While DCF has referred to the past performance of the funds it recommended to him, as DCF will know, past performance is no guarantee for future performance and so I consider the discount rates and the regulator's standard projections to be more realistic in this regard in the long term rather than projecting historic returns forward, particularly over such a long period of time.

I've noted too DCF's comments about the actual performance of Mr K's pension since it was transferred – that it has grown at a rate of 5.82% (or even as much as 7.07% per year) per year – and that it is reasonable to think these returns would have continued. For the same reasons as our Investigator, I can't agree that annual rate of return for Mr K's pension should be 7.07%. But even if I did accept that this should be the applicable annual rate of return I don't think it shows Mr K was improving his retirement benefits as a result of the transfer.

I say that because Mr K had a long way to go until retirement and because I don't think it is reasonable to assume, as DCF has stated, that such returns would have continued until Mr K had retired. Not only is past performance no guarantee of future performance, but, as I've said above, the lowest critical yield was 4.82% yet this was still higher than the discount rate of 4.7%. And to attain an annual return rate that allowed him to improve on his DB scheme benefits, (which also provided for an income for his future wife in the event of his death), Mr K would have needed to have taken investment risks significantly in excess of those he was either prepared, or in a position, to take.

I don't think that the length of time Mr K had to go to retirement makes his capacity for loss significant. I can see that Mr K had no investments or savings at the time of the advice and that he had 25 years left to run on his mortgage. It can't be assumed that just because Mr K had 30+ years to go until he retired that he could afford to 'gamble' by transferring his DB scheme. The income he was forecast to receive at retirement from the scheme (if he remained) is, I think, one he didn't have the capacity to lose.

In summary, even if the BSPS had moved to the PPF and Mr K's benefits were reduced as a result, if he retired early he would have still been very unlikely to match, let alone exceed, those benefits by transferring to a personal pension. By transferring his pension I think it was highly likely that Mr K would be financially worse off in retirement.

Given Mr K was likely to receive lower overall retirement benefits by transferring to a personal pension, for this reason alone I don't think a transfer out of the DB scheme was in his best interests. Of course, financial viability isn't the only consideration when giving transfer advice, as DCF has argued in this case. There might be other considerations which mean a transfer is suitable and in Mr K's best interests, despite providing overall lower benefits. I've considered these below.

Flexibility

It seems the main reason that DCF recommended this transfer was for the flexibility and control it offered Mr K. Having considered the evidence, I don't think Mr K needed to transfer his DB scheme to a personal pension in order to have flexibility in retirement. Nor do I think he needed to access his DB scheme before his NRD such that it was at risk of actuarial reduction.

It's evident that Mr K could not take his DB scheme benefits flexibly. Although he could choose to take TFC and a reduced annual pension, Mr K had to take those benefits at the same time. But I'm not persuaded that Mr K had any concrete need to take TFC and defer taking his income, or to vary his income throughout retirement. To my mind this seems more of a 'nice to have' rather than a genuine objective.

Furthermore, DCF's advice ignores the retirement funds that Mr K would be building up over the next 30+ years, through his employer's DC scheme. The fact-find says Mr K was contributing 6% of his salary per month. Mr K's employer was contributing 10% of his salary per month. Whilst I don't know from this information exactly how much was being contributed to Mr K's pension it is reasonable to assume that even with modest investment growth over the next 30+ years, Mr K will have access to a significant fund by the time he retires. And Mr K could use his DC scheme if he wanted to retire early, without needing to access his DB scheme before his NRD (thereby avoiding any actuarial reduction).

I accept at the time of the advice, the BSPS2 hadn't been established. Although I think the communications sent out by the scheme trustees were very optimistic that the scheme operating conditions would be met, it wasn't certain. And if Mr K had opted into the BSPS2 and it hadn't gone ahead, he would've moved with the scheme to the PPF. At age 65 Mr K would've been entitled to a pension of £5,337 per year (along with a PCLS of £35,582) from the PPF. This was lower than the pension he'd be entitled to under the BSPS2, but I don't think it was substantially lower such that it should've made a difference to the recommendation. As I've said above, Mr K would've had his DC scheme to draw on until his state pension became payable, or until he reached his DB scheme NRD if he wanted to retire earlier, as well as his wife's pension to supplement their household income. So, I still think Mr K could've met his needs in retirement even if the BSPS2 hadn't gone ahead and he'd had to move with it to the PPF.

Furthermore, the fact-find noted that Mr K and his wife were saving for their wedding (which took place a month or so after the fact-find was completed). Whilst there were no other savings documented, it is reasonable to assume that after their imminent wedding, Mr K's disposable income of £290 per month and Mrs K's income of £800 per month, could be put towards building up a savings pot. And their mortgage was due to be paid off by the time Mr K was aged 51 meaning he would have even more disposable income to put towards his savings thereafter. So potentially, by the time he wanted to retire, Mr K could have had a substantial savings pot to access flexibly to top up his retirement income.

DCF says Mr K wanted a retirement income of £1,800 per month in today's terms, meaning that in reality his income at retirement would need to be a lot higher. However, this was some 30 years away, so I think it was too soon for Mr K to realistically know what income he'd need in retirement.DCF says that the value of the scheme income at age 65 would be around £8,904. Clearly this would not have met the income need Mr K had cited but I don't think this shows that it was in Mr K's best interests to transfer to a personal pension. As I've set out above, Mr K was unlikely to obtain benefits of the same value at retirement if he transferred his funds to a personal pension. So he would have had even less income than was forecast. But I still think Mr K had a better chance of achieving his target retirement income of £1,800 per month by opting into the BSPS2 (the benefits under which were guaranteed and escalated) rather than relying on investment growth in a personal pension for all of his retirement funds. The majority of the pension provisions Mr K was building up over the next 30 years would be subject to investment risk, so I don't think it was reasonable to also place his guaranteed pension funds at risk.

And I can't see that there was any known need for the TFC without having to simultaneously draw an income (Mr K's mortgage would be repaid some years before retirement). But if, by the time Mr K retired some 30+ years hence, he needed a lump sum without wanting to start drawing his pension at the same time there were, as I've previously explained, other means available to him. And I think Mr K could've met his income needs until his state pension became payable at age 68. Mr K would have likely had a significant pension to draw on flexibly (from his DC scheme), as and when he needed, to top up his income or take additional lump sums. So, I don't think Mr K would have had to sacrifice flexibility in retirement by opting into the BSPS2.

Overall, I'm satisfied Mr K could have met his income needs in retirement by maintaining the guaranteed income available to him through the BSPS2 or the PPF at age 65 and taking additional funds from his DC scheme until his state pension became payable. So, I don't think it was in Mr K's best interests for him to transfer his pension just to have flexibility that he didn't need.

Death benefits

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

I also think the existing death benefits attached to the DB scheme were underplayed. Mr K was married (by the time of the transfer) and had a child so the spouse's pension provided by the DB scheme would've been useful to his spouse if Mr K predeceased her. There was also provision for a children's pension up to age 23 if they remained in full-time education. I don't think DCF made the value of this benefit clear enough to Mr K. These were guaranteed and escalated – the spouse's pension would also be calculated as if no TFC had been taken – so they were not dependent on investment performance, whereas the sum remaining on death in a personal pension was. And as the TVAS shows Mr K's pension fund would be depleted by age 89 if he achieved an annual investment return of 6.3%, so there may not have been a large sum left, if any at all, to pass on when he died. In any event, DCF should not have encouraged Mr K to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

DCF says that Mr K couldn't have achieved his objective of leaving a lump sum to his wife and children without transferring his pension; I'm unable to agree. Transferring his pension was clearly not the *only* way for Mr K to achieve this objective. If Mr K genuinely wanted to leave a legacy for his child(ren), which didn't depend on investment returns or how much of his pension fund remained on his death, I think DCF could've explored life insurance further. Mr K already had a significant death in service benefit through his employer and I can see from the fact-find that he and his wife had joint life insurance (though how much and for what term wasn't documented by DCF). So, arguably, Mr K already had sufficient life cover in place. But if he wanted an extra sum specifically for his children, he could've taken extra cover out on a whole of life basis and written it in trust for the benefit of his children.

Furthermore, it's evident that Mr K could nominate beneficiaries of his choosing under the DC scheme. So, he'd already made provisions to ensure that the vast majority of his pension didn't die with him.

In any event, whilst death benefits might be important for consumer, there generally shouldn't be a disproportionate emphasis on this compared to their own retirement needs. Overall, I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr K. And I don't think that insurance was properly explored as an alternative.

Control or concerns over financial stability of the DB scheme

It's clear that Mr K, 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 he was worried his pension would end up in the PPF. He'd heard negative things about the PPF and he said he preferred to have control over his pension fund.

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

As I've explained, by this point details of BSPS2 were known and it seemed likely it was going ahead. So, the advice DCF gave Mr K should've properly taken the benefits available to him through the BSPS2 into account and I think this should've alleviated Mr K's concerns about the scheme moving to the PPF.

But even if there was a chance the BSPS2 wouldn't go ahead, I think that DCF should've reassured Mr K that the scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr K through the PPF would've still provided a significant portion of the income he thought he needed at retirement, and he was unlikely to be able to exceed this by transferring out. 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've led to DCF recommending Mr K transfer out of the DB scheme altogether.

I also think Mr K's desire for control over his pension benefits was overstated. Mr K 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 their own. So, I don't think that this was a genuine objective for Mr K– it was simply a consequence of transferring away from his DB scheme. It seems to me that Mr K's stated desire for 'control' related more to moving his pension away from an employer that he didn't trust than to any resolution on his part to begin to manage his investment.

But it ought to have been explained that Mr K's employer and the trustees of the BSPS2 were not one and the same. And in any event, Mr K was not intending to leave his employment and his DC pension remained connected to his employer – so transferring out of the scheme didn't achieve the 'break' from his employer. So had DCF explained that Mr K's belief regarding the control Mr K's employer had over his pension was misplaced, I think he would have been reassured by this.

Summary

It's clear that Mr K, 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 he was worried his pension would end up in the PPF. He'd heard negative things about the PPF and he said he preferred to have control over his pension fund.

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

As I've explained, by this point details of BSPS2 were known and it seemed likely it was going ahead. So, the advice should've properly taken the benefits available to Mr K through the BSPS2 into account and I think this should've alleviated Mr K's concerns about the scheme moving to the PPF.

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

Ultimately, I don't think the advice given to was Mr K suitable or in his best interests. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr K was very likely to obtain lower retirement benefits and, in my view, there were no other particular reasons which would justify a transfer and outweigh this. Mr K had a vague objective to retire between the ages of 57-60 and take some TFC but I don't think this was a fully formed plan; it was some 30 years away. And I don't think DCF interrogated this objective in any meaningful way – it didn't establish how much TFC or income Mr K would need, so it couldn't offer any real insight into whether Mr K could've met this objective by moving with the scheme to the PPF or the new BSPS2, or by using the savings already available to him. So, I don't think Mr K's plans or ambitions were concrete enough for DCF to say it was in his best interests to give up his guaranteed benefits and transfer out of the scheme.

I appreciate that at the time the advice was given there was a lot of uncertainty around the pension scheme and I've fully taken into account that Mr K was likely keen to transfer out as he was worried about his pension and colleagues were telling him this was a good idea. However, it was the adviser's responsibility to objectively weigh up the options for Mr K. He should have advised him what was best for his circumstances and explained what he was giving up in the BSPS and that moving to the PPF was not as concerning as he thought. For the reasons given above, I think this advice should have been to remain in the BSPS.

Mr K was being advised by DCF after having received the "Time to Choose" document and was at the point where he had to select which option to he wanted to take. I carefully considered what Mr K likely would have done – had he been suitably advised by DCF – and on balance I think he would have opted to join the BSPS2. I say this I don't think Mr K's retirement plans were fully formed. So, I don't think that it would've been in his interest to accept the reduction in benefits he would've faced by the scheme entering the PPF, as it wouldn't be offset by the more favourable reduction for very early retirement. And by opting into the BSPS2, Mr K would've retained the ability to transfer out of the scheme if he needed to at some point in the future. The annual indexation of his pension when in payment was also more advantageous under the BSPS2. So, I think DCF should've advised Mr K to opt into the BSPS2.

DCF says the BSPS2 had not been confirmed at the time it was advising Mr K and that it is unreasonable for us to say Mr K should've been advised to join this scheme as it wasn't a genuine option. I appreciate that the BSPS2 hadn't been confirmed when the advice was given. DCF was advising Mr K though only a month or so before the "Time to Choose" form had to be returned to Mr K's employer. I think it was clear to all parties at this point that talks were progressing well and that BSPS2 was very likely to be going ahead. So, contrary to what DCF has said, I do think this was an option that it could've recommended at the time. And I don't think DCF could be said to be acting in Mr K's best interests by ignoring the progress of the new scheme and failing to consider whether opting into this scheme was suitable for him.

So, I think DCF should've advised Mr K to wait a very short while and join the BSPS2.

Of course, I have to consider whether Mr K would've gone ahead anyway, against DCF's advice. DCF says Mr K had made up his mind to transfer and was talking to other advisers (with the cost of the advice being his principal concern). So DCF says that even though it had pointed out the risks of transferring, Mr K was adamant that the transfer was to go ahead. Put simply, DCF says that Mr K was as good as an 'insistent client' who would've chosen to transfer even if it had advised him against it.

I'm not persuaded that Mr K's concerns about his employer or the PPF were so great that he would've insisted on the transfer knowing that a professional adviser, whose expertise he had sought out, didn't think it was suitable for him or in his best interests. And if DCF had explained that Mr K was always unlikely to exceed the guaranteed benefits available to him by transferring, that he shouldn't be prioritising death benefits over retirement benefits, that the flexibility he sought could be met by other means, that the uncertainty over his requirements meant transferring at that time was not in interests and that the other things he'd expressed worry about were not things he needed to be as concerned about as he was, I think that would've carried significant weight. So, I don't think Mr K would have insisted on transferring out of the DB scheme.

For this reason, I think DCF should compensate Mr K for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology. And it's the benefits offered by the BSPS2 at age 65 which should be used for comparison purposes. This is because I know that Mr K is a very long way from retirement and has no firmly formed plans around when he will retire.

Putting things right

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and has set out its proposals in a consultation document - CP22/15-calculating redress for non-compliant pension transfer advice**.** The consultation closed on 27 September 2022 with any changes expected to be implemented in early 2023.

In this consultation, the FCA has 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.

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 whilst the consultation takes place. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with any new rules and guidance that may come into force after the consultation has concluded.

We've previously asked Mr K whether he preferred any redress to be calculated now in line with current guidance or wait for any new guidance /rules to be published. Mr K confirmed that he would like any redress to be calculated in line with current guidance.

I am satisfied that a calculation in line with FG17/9 remains appropriate and, if a loss is identified, will provide fair redress for Mr K.

A fair and reasonable outcome would be for the business to put Mr K, as far as possible, into the position he would now be in but for DCF's unsuitable advice. I consider Mr K would have most likely opted into the BSPS2 if suitable advice had been given.

DCF must therefore undertake a redress calculation in line with the regulator's pension review guidance as updated by the Financial Conduct Authority in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers.

Mr K is a long way from retirement. 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 K's acceptance of the decision.

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

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr K'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 K 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/her/their 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 K within 90 days of the date DCF 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 DCF to pay Mr K.

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

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 intend to uphold this complaint and require D C Financial Limited to pay Mr K 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 D C Financial Limited to pay Mr K any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I would only require D C Financial Limited to pay Mr K any interest as set out above on the sum of £160,000.

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

If Mr K accepts this decision, the money award becomes binding on D C Financial Limited.

My recommendation would not be binding. Further, it's unlikely that Mr K can accept my decision and go to court to ask for the balance. Mr K 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 K to accept or reject my decision before 30 December 2022.
Claire Woollerson
Ombudsman