DRN-3614109

The complaint

Mr G complains about the advice David Stock & Co Limited ('DSC') gave to him to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a personal pension. He says the advice might not have been suitable for him and may have caused a financial loss.

What happened

In March 2016, Mr G'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')[1], or a new defined-benefit scheme ('BSPS2'). Alternatively, members were informed they could transfer their benefits to a private pension arrangement.

In May 2017, the PPF made the announcement that the terms of a Regulated Apportionment Arrangement ('RAA') had been agreed. That announcement said that if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr G's 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.

In September 2017 the BSPS trustees gave Mr G details of his DB pension's enhanced cash equivalent transfer value, which was £218,634.

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.

Around the same time Mr G approached a financial adviser for advice about his pension. That adviser didn't have the regulator's permission to give advice on pension transfers and referred Mr G to DSC.

DSC conducted a fact-find with Mr G. Amongst other things it noted he was 36 years old and married to Mrs G. They had two dependent children. Both Mr and Mrs G were working. Mr G had begun contributing to his employer's recently set up defined contribution pension scheme. He said his preferred retirement age was 57.

In November 2017 DSC sent Mr G its suitability report setting out its analysis and recommendations. It recommended Mr G transfer his DB benefits to a named personal pension. Mr G accepted DSC's recommendations and transferred his DB benefits to the recommended personal pension.

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[1] The PPF acts as a 'lifeboat' for insolvent DB pension schemes. It pays compensation to members of eligible schemes for their lifetime. The compensation levels are, generally, around 90% of the level of the original scheme's benefits for deferred pensions. But the PPF's rules and benefits may differ from the original scheme.

In 2021 Mr G complained, via the Financial Ombudsman Service, to DSC that its advice may not have been suitable for him. DSC replied. It said it believed its advice to transfer was suitable for Mr G.

Mr G then asked the Financial Ombudsman Service to look into his complaint. One of our Investigators considered it. He didn't think DSC's advice was in Mr G's best interests. So the Investigator recommended DSC establish if Mr G had suffered a financial loss as a result of its advice. Our Investigator also recommended DSC make a payment of £300 to address Mr G's distress and inconvenience arising from the unsuitable advice.

DSC didn't initially accept our Investigator's complaint assessment. As the matter wasn't resolved informally the complaint was referred for an Ombudsman's review.

While the matter was waiting an Ombudsman's attention we wrote to the parties. We said the regulator, the Financial Conduct Authority ('FCA') was consulting on amending its guidance to firms about the methodology for calculating redress for unsuitable DB pension transfers. We said that Mr G had the choice of using the existing methodology or to await the introduction of the new methodology which was anticipated to come into effect in 2023. Mr G told us he would prefer to use the FCA's current redress methodology.

In November 2022 DSC told us it had performed a redress calculation, using the current methodology, based on Mr G retiring at his preferred retirement age of 57. It said the calculation showed that Mr G hadn't suffered a loss. We put that to Mr G but he didn't accept it. Amongst other things he thought DSC should use a retirement age of 65.

In January 2023, after the FCA had shared its new methodology for calculating redress, DSC offered to redo the redress calculation using a retirement age of 65. Having done so it said that the calculation again showed no loss to Mr G. Mr G still didn't accept the matter was resolved.

Similarly, in May 2023, after the FCA introduced a BSPS specific calculator DSC said it had used that calculator to find out if Mr G had suffered a loss. It said he hadn't. But, at that time we didn't received the details of its calculation.

Recently, following contact from the Financial Ombudsman Service DSC has run the redress calculation again using up-to-date figures. It again showed that Mr G had not suffered a loss as a result of transferring out of his DB scheme. DSC confirmed it would offer Mr G £300 compensation for his distress and inconvenience resultant from the matter.

Mr G still wasn't happy that his complaint had been resolved. So it's been referred to me to make a final determination.

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.

It's clear from the above that DSC is willing to take the necessary steps to offer appropriate redress. So I don't intend to examine the suitability of its advice to Mr G in detail. Save that is to say that I agree that the advice wasn't suitable for Mr G for broadly similar reasons to those our Investigator gave.

In particular I don't think Mr G needed to make a decision to transfer when he did. Both the PPF and the BSPS2 would allow Mr G to take early retirement if that's what he decided to do, nearer to his early retirement age. Although I acknowledge that his pension entitlement would have been actuarially reduced to account for the fact he would most likely access it for longer.

Also, if Mr G had opted for the BSPS2 then he would have kept the potential option of transferring out of the DB scheme nearer to his retirement age. Mr G was only 36 years old at the time of the advice. He was still over 21 years away from his preferred retirement age and 29 years from the DB scheme's normal retirement age. A lot could happen in that time. And if he'd remained in the DB scheme, he would have kept the secured benefits the scheme offered and wouldn't have to put his pension funds at investment risk. So, I don't think a recommendation that he transfer his DB funds, when he was so far from retirement was in his best interests.

Overall, I can't see persuasive reasons why it was in Mr G's best interest to give up his DB scheme guarantees.

Putting things right

The sticking point now in terms of concluding the matter is not the suitability of the advice but whether DSC's offer for redress is fair and reasonable. Mr G still doesn't consider the matter resolved.

Mr G's suggested that, rather than making a calculation using up-to-date figures and assumptions, DSC should use the market conditions at the time of the advice/transfer. But I don't think that would be fair.

As one of our Investigator's has previously explained to Mr G, the point of a redress calculation is not to put him into a better position than he would have been had he not transferred. Instead the aim is to put him back in the financial position he would have been in at retirement had he remained in the DB scheme.

DSC carried out its recent calculations using the specific BSPS calculator provided by the FCA, which is what I would expect it to do in the circumstances.

The calculator was designed to establish how much a consumer needs in their current pension arrangement to secure equivalent retirement benefits that they would have been entitled to from either the BSPS2 or the PPF, had they not transferred out. It uses economic and demographic assumptions as set out by the FCA in order to do so.

If the calculation shows there is not enough money in the consumer's pension arrangement to match the BSPS 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, despite the fact that 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 BSPS calculator has been developed by actuaries and is programmed by the FCA with benefit structures of the BSPS, BSPS2 and PPF. The FCA updates the relevant economic and demographic assumptions the calculator uses regularly. This information can't be changed by firms.

Mr G's said that his transfer fees should be reimbursed. However, the calculation compares the value of Mr G's personal pension against the cost of purchasing the DB benefits on the open market. As the transfer fees reduced the starting value of Mr G's personal pension from the outset, they also reduced its current value. So those have already been factored into the calculation. And if he had suffered a loss then DSC would have compensated him appropriately. That's not the case here as the most recent calculation shows that Mr G has over £29,400 more in his personal pension than he required to replicate his DB benefits.

Also Mr G's said that his ongoing personal pension management fees should be reimbursed. But the FCA's calculator 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. So those have already been accounted for within the calculation.

I've checked the inputs that DSC entered which are specific to Mr G. These include his personal details, his individual benefits from the BSPS 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 BSPS, he would have moved to the BSPS2 and that he would have taken his DB benefits at age 65.

Overall, based on what I've seen, the calculation has been carried out appropriately and 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 G's case shows that there is no shortfall to his pension and he has significantly more than enough funds to be able to replicate his DB benefits in retirement. So, I'm satisfied Mr G has not suffered a financial loss by transferring his pension.

DSC has offered to pay £300 to address the distress and inconvenience this matter has caused Mr G. While I'm satisfied that DSC's advice wasn't in his best interests at the time, I don't think he's lost out financially as a result. That said, I don't doubt the uncertainty he's experienced as a result of DSC's advice has caused some distress and concern by finding out it may not have been suitable. And I'm conscious this upset wouldn't have happened but for DSC's advice.

So, in the circumstances, I think DSC's offer of £300 is fair and reasonable.

My final decision

I uphold this complaint and require David Stock & Co Limited to pay Mr G a sum of £300 for the worry he says this matter has caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before , unless it has already done so.

Joe Scott
Ombudsman