

The complaint

Mr K 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 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')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 K'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 K details of his DB pension's enhanced cash equivalent transfer value, which was £341,703.

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.

Later the same month, October 2017, Mr K approached DSC for advice about his pension. It gathered some basic information from him and gave him some generic advice about the implications, advantages and disadvantages of transferring from a DB scheme.

Soon after, on 5 November 2017 DSC obtained a transfer value analysis report and gave Mr K an "initial report". Amongst other things this explained the growth rates required (the critical yields) to match the benefits from Mr K's DB scheme by transferring to another arrangement. It again set out some of the advantages and risks of transferring. It said that if Mr K wanted to go ahead with a transfer it could assist him. It set out some investment options should he do so.

DSC then met with Mr K to complete a more detailed fact-find. Amongst other things it noted he was 42 years old, unmarried but living with his partner and they had one child. Mr K was employed. He owned his own home subject to a mortgage that was due to be repaid when

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.

he was 50. He had relatively recently joined his employer's newly set up defined contribution pension scheme.

DSC recommended that Mr K should transfer his DB scheme to a personal pension. Mr K accepted DSC's recommendation. And with DSC's assistance, he engaged the services of a discretionary fund manager to manage the investment portfolio held within his personal pension.

In 2021 Mr K 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 K.

Mr K 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 K's best interests. So the Investigator recommended DSC establish if Mr K had suffered a financial loss as a result of its advice. Our Investigator also recommended DSC make a payment of £300 to address Mr K'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 awaiting 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 K 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 K told us he would prefer to await the regulator's updated methodology.

Around the same time, in November 2022, DSC told us it had performed a redress calculation, using the current methodology. It said the calculation showed Mr K hadn't suffered a loss. We put that to Mr K but he didn't accept it and said he would await an Ombudsman's review.

In October 2023 we wrote to DSC. We noted that while it had previously carried out a redress calculation, since then, the FCA had developed a BSPS specific calculator for establishing redress for BSPS cases. We invited DSC to take the necessary steps to carry out an up-to-date redress calculation.

DSC gathered the required information and performed the redress calculation using the FCA's BSPS calculator. The calculation showed Mr K had not suffered a loss. However, DSC said it would pay Mr K £300 to address his distress.

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

In particular I don't think Mr K needed to make a decision to transfer when he did. That's because, if he'd opted to join the BSPS2 then he would have kept the potential option of transferring out of the DB scheme nearer to his retirement age. Mr K was only 42 years old at the time of the advice. He was still around 23 years away 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 K's best interest to give up his DB scheme guarantees.

Putting things right

What remains in contention is whether or not DSC's offer to resolve Mr K's complaint is fair and reasonable.

I can understand that consumers like Mr K might have an expectation that, because they received unsuitable advice, they must be entitled to a form of redress, to put that right. And that redress would be as well as any payment to compensate for distress.

However, as one of our Investigators has previously explained to Mr K the purpose 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 calculations themselves are fairly complex. They include assumptions about future market conditions, interest rates and investment returns. And as those assumptions are susceptible to market forces, the FCA updates them on a regular basis. I understand that the aim of the FCA's redress methodology is to produce results comparable to how a court would award damages in similar 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. As I've said above, the FCA updates the relevant economic and demographic assumptions the calculator uses 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.

Mr K's said that his transfer and other ongoing pension and investment fees should also be reimbursed. But, the calculation compares the value of Mr K's personal pension now against the cost of purchasing the DB benefits on the open market. And the cost of the fees Mr K has already paid has reduced the value of Mr K's personal pension used in the calculation. So those have already been factored into it. 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 K has over £105,000 more in his personal pension than required to replicate his DB benefits.

I'm aware that Mr K told us that he hasn't made use of DSC's ongoing advice service. But he confirmed that DSC has offered him case reviews. Also, he agreed to pay its ongoing fee at the outset, and he could have cancelled that service if he didn't wish to use it. So I don't think DSC's applied its fee unfairly.

I've checked the inputs that DSC entered which are specific to Mr K. 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 hadn't been advised to transfer his benefits from the BPS, he would have moved to the BPS2 and taken his DB benefits at age 65.

I've noted that DSC's calculation assumes Mr K is married when he's confirmed that, while he was living with his partner at the time of the advice, he is still unmarried. However, that anomaly will not affect whether or not he is entitled to redress. That's because the relevance of marital status is to allow for the possible increase in the cost of matching the DB benefits where a spouse's pension may be payable following the death of the scheme member. Spouse's pensions are usually only payable where the scheme member was married. That's not the case for Mr K.

So, as DSC has incorrectly recorded Mr K as being married in its calculation that would only serve to make the overall cost – in its calculation – to replace the DB pension more expensive. That, in turn, would reduce the gap between the cost to replace the pension and Mr K's current personal pension value. In other words, if DSC had correctly recorded that Mr K was single, then the surplus value of his current pension compared to the cost of matching his DB benefits would have been greater than DSC's calculation shows.

Overall, based on what I've seen, DSC 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 K'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 K 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 K. I'm aware he doesn't think that is enough. However, when considering an award for distress and inconvenience I'm only considering the impact of the matters being complained about, in this case DSC's advice to transfer. So I won't have regard to any additional distress that might have happened during the complaints handling process, which Mr K has referred to in correspondence with us. That's because such complaint handling issues are – generally – outside of our remit.

I've thought about an appropriate award flowing from DSC's unsuitable advice. And for the reasons given above I don't think Mr K's lost out financially. 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. In the circumstances, I think DSC's offer of £300 is fair and reasonable.

My final decision

I uphold this complaint and, unless it has already done so, require David Stock & Co Limited to pay Mr K 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 K to accept or reject my decision before 8 February 2024.

Joe Scott
Ombudsman