

## The complaint

Mr R 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 R held benefits in the BSPS relating to a period of employment between September 1992 and July 2001.

In March 2016, Mr R'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, one of which was a transfer to the Pension Protection Fund ('PPF') – the PPF is a statutory fund designed to provide compensation to members of defined benefit pension schemes when their employer becomes insolvent.

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 R'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. The deadline to make a decision about joining the BSPS2 was 11 December 2017 (later extended to 22 December 2017).

Mr R believes he may have opted into the new BSPS2. But because he was uncertain about the long-term future of the BSPS2 as well, was looking at whether transferring was still in his interests. Mr R received an updated transfer valuation for his BSPS benefits from the scheme trustees on 13 December 2017. His benefits had a cash equivalent transfer value ('CETV') of £169,744.57.

Mr R contacted DS&C for advice in January 2018. DS&C sent him an email acknowledging that enquiry on 8 January 2018. It included a short questionnaire for him to complete and said a meeting had been arranged with an adviser on 18 January 2018.

Mr R returned the one-page questionnaire to DS&C on 9 January 2018. This recorded some limited information about him – that he was 41, divorced and had two children. In addition to the BSPS pension, Mr R had two other pensions. One was with his current employer and was valued at approximately £125,000. The second was a smaller stakeholder pension valued at around £27,000.

DS&C has provided a copy of its "initial report" which was dated 10 January 2018 – so was issued before Mr R's meeting with an adviser. This letter summarised the options available

to scheme members. And it 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 people in Mr R's position had asked to discuss a transfer were unhappiness with the changes to the scheme, to have control over their pension, greater flexibility and because the scheme did not allow a lump sum to be passed on to family after death. And it talked about the sponsoring employer's new defined contribution ('DC') pension scheme and indicated Mr R was a member of it – although this was incorrect as he no longer worked for that employer. DS&C also said it had assumed for the purpose of the report that Mr R's attitude to risk would be moderate / balanced.

The letter went on to say Mr R had asked to discuss a transfer and that DS&C had carried out a transfer analysis and calculated the critical yield - the level of growth the transferred funds would need to achieve each year to enable Mr R to purchase equivalent benefits to those he was giving up. It said this was 2.81% which DS&C said it thought was acceptable for someone with an attitude to risk of 4-5 on a scale of 1-10. DS&C said, if the challenges of transferring were acceptable to Mr R, it could recommend a pension from several providers, but DS&C favoured a specific provider. And the letter said if the report met with Mr R's approval it would arrange a meeting to complete the paperwork to enable the transfer.

The previously scheduled meeting for 18 January 2017 then appears to have gone ahead. DS&C has provided a copy of a more detailed fact-finding document completed at that meeting. In addition to the information previously gathered it said Mr R was in good health. And it was noted he was working full time, earning approximately £54,000 per year. The section about pensions noted that Mr R held a DC pension with his current employer.

The fact-find said Mr R had requested advice because of the transfer value he'd received and uncertainty around the BSPS2. It said that Mr R believed he'd be better off by transferring. Mr R's preferred retirement age was said to be 55 but there was nothing recorded about his needs beyond to "be comfortable".

The fact-find included sections about Mr R's investment experience, capacity for loss and attitude to risk. DS&C recorded that Mr R had a 'moderate' attitude to risk.

Mr R signed an acknowledgment that he'd received advice from DS&C on 18 January 2018. Application forms were completed on the same day to transfer Mr R's BSPS benefits to a personal pension with the provider that DS&C had said previously was its preferred option.

DS&C has provided a copy of its suitability report which was also dated 18 January 2018. This said the reasons Mr R was interested in transferring was to have control of his pension and to add this to his pension with his current employer. The suitability report referred to his new employer's pension plan as a DB scheme, even though the fact find had referred to it as a DC scheme. DS&C also said Mr R wanted flexibility to retire before the BSPS allowed and to be able to gift his pension to his children in the event of his death. It said Mr R's current employer's pension plan would not accept the transfer directly from the BSPS but would from a personal pension. And DS&C said Mr R had decided to transfer his pension no matter the risks and this was being encouraged by union representatives "at work" even though Mr R no longer worked for the sponsoring employer.

DS&C said a DB scheme did not offer flexibility about when a pension could be taken and would not permit retirement before age 65 other than with trustee and employer consent. And even if it did allow early retirement, significant actuarial reductions could be applied. The report went on to say that DS&C believed a transfer met Mr R's needs and it recommended that he transfer his CETV to the personal pension.

The transfer went ahead in line with DS&C's recommendation. I understand from Mr R that

he did later move his pension benefits to his current employer's pension scheme. But he has said that this is a DC scheme.

Mr R contacted the Financial Ombudsman Service in 2021 to raise concerns about the advice he'd received. He was unsure that it was suitable. The complaint was referred to DS&C. It didn't uphold Mr R's complaint. It said Mr R had wanted to transfer his BSPS pension benefits to his current employer's scheme, which it acknowledged was a DC scheme. And DS&C believed the transfer was suitable to meet this and Mr R's other objectives and that he was given information about the risks involved.

Mr R referred his complaint to the Financial Ombudsman Service. Mr R agreed when he approached DS&C for advice he was considering transferring his BSPS benefits to his new employer's pension scheme. But he says he was thinking about doing so because so many of his former colleagues were transferring and he thought this was potentially more secure. And Mr R says he didn't understand the ramifications of a transfer and that this wasn't clearly explained by DS&C.

One of our Investigator's considered the complaint and said they thought it should be upheld. He noted that the critical yields DS&C calculated were not based on the intended destination for the pension benefits – Mr R's current employer's scheme. Given how far Mr R was from retiring, the Investigator didn't think his plans for retirement were known or that he had a need for flexibility. The Investigator also didn't think the alternative death benefits offered by a personal pension or his concerns about what had happened to his pension to that point meant a transfer was in his best interests. So, he recommended that DS&C compensate Mr R for any losses caused by the unsuitable advice and pay him £300 for the distress he'd been caused.

DS&C disagreed. It said Mr R had already decided to transfer when he asked it for advice, he would always have sought to do so, it had agreed to assist him as a favour and he was aware of the potential disadvantages.

The Investigator wasn't persuaded to change their opinion, so the complaint was referred for a final decision by an Ombudsman.

The Investigator let both parties know, in September 2022, that the regulator, the Financial Conduct Authority ('FCA') was consulting on some potential changes to its guidance on calculating redress in complaints involving potential pension transfer mis-selling. Where it was agreed that a calculation should be carried out the FCA said customers should be given the choice to wait for any new rules to come into force, which was expected to happen in April 2023, or to have redress calculated under the rules as they were at the time.

Mr R said his preference was to wait for the new rules to come into effect. But DS&C then said in November 2022, without prejudice to its position that the advice was suitable, it had run a redress calculation using the FCA methodology in place at that time (prior to the new rules coming into effect). It said this showed that Mr R had not suffered a loss and no redress was due. So, it said it offered to now record a 'no loss' position.

Although he'd indicated he wished to wait for the new rules, this calculation was shared with Mr R. But he did not accept it and wanted his complaint to be reviewed by an Ombudsman. He added that he'd be more comfortable if any calculation was carried out by an independent party.

The regulator has since developed a BSPS-specific redress calculator. The calculator was developed for the BSPS consumer redress scheme. But it can still be used to carry out calculations in non-scheme cases, like Mr R's complaint with the Financial Ombudsman

Service. And our Investigator informed both Mr R and DS&C, that if the Ombudsman considering the case decided to uphold it, they may require DS&C to calculate any redress due using the FCA BSPS-specific calculator.

I understand DS&C has said recently that it was willing to re-run a redress calculation using the BSPS specific redress calculator. But it hasn't yet done so – as I understand information it needs about the value of Mr R's current pension is temporarily unavailable. As the complaint has not been resolved, in fairness to all parties, I'll now make a decision on the matter.

### **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 Businesses ('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 DS&C'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. These include COBS 19.1.6G in which the FCA states that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, DS&C should have only considered recommending a transfer if it could clearly demonstrate that the transfer was in Mr R's best interests.

I think there are several issues with the process that DS&C followed here. It's initial report to Mr R was issued before any meaningful information about his circumstances or objectives appear to have been obtained, and instead talked about what other BPS members had done, and implied Mr R would likely want to do the same. It included information that was not applicable to Mr R – such as saying he was a member of the sponsoring employer's new pension scheme. The letter also already talked about the process for transferring and a preferred personal pension provider. I don't think this indicates DS&C started from the position that a transfer was unsuitable for Mr R. And I can't see that DS&C had enough information about Mr R to make a recommendation about what was in his best interests at that time.

A meeting with an adviser then took place. With further information being gathered at that

meeting, through a fact-find, about Mr R's circumstance and aims. But at the same meeting a recommendation to transfer was made. It is difficult to reconcile that the further information gathered played a significant part in that recommendation given it was made at the same meeting. And it appears more the case that DS&C entered into that meeting with the intention of recommending a transfer – which again was not in line with how the FCA said it should approach pension transfer advice.

The suitability report referred several times to Mr R's intention being to transfer his benefits to his new employer's pension scheme and to this as a DB scheme. And it says a direct transfer would not be accepted. I can't see though that DS&C gathered any information from the destination scheme itself. And the information recorded in the fact-find is that this was in fact a DC scheme, which DS&C also said in its response to the complaint. This is clearly important to the advice, as the structure and associated risks of a DC scheme and DB scheme are different. And I think again, this suggests advice was given without sufficient relevant information having been obtained.

The suitability report also included information that appears to have been preprepared and not applicable to Mr R. For example, it said a union representative at the sponsoring employer was encouraging all employees at "your works" to transfer from the BSPS. Notwithstanding there is nothing to indicate that this representative was an authorised adviser, Mr R was not an employee of the sponsoring employer. And is unlikely therefore to have been involved in direct meetings with the union representative. I think this calls into question DS&C's argument that Mr R had already decided to transfer and would not be dissuaded – as these statements in the suitability report were made in relation to and as a reason for him having that attitude. And I think Mr R's testimony and the contents of the fact-find also call into question that he was going to go ahead "no matter what the risks of transferring are".

In addition, the applications were all completed at the same time as the advice was given, before Mr R had been given the opportunity to think about what had been discussed. And I've seen evidence to suggest that they were submitted to the relevant providers the following day. And I'm not sure, given the importance of the decision, which was irreversible, that this process could be said to have been in Mr R's best interests either.

It is also concerning that, in response to the Investigator's opinion, DS&C said it had agreed to help Mr R proceed with a transfer as a favour. The role of an adviser, in relation to pension transfers, is to give objective advice about what was in a consumer's best interests. Not to facilitate something they may have thought they wanted, and certainly not as a favour.

I've taken all of these things into account when looking at the advice given. And, having considered all the evidence in this case, like our Investigator, I'm not satisfied a transfer was in Mr R's best interests or that the advice to transfer was suitable. So, I'm upholding the complaint. I'll explain why.

- DS&C was required by the regulator to produce a transfer value analysis ('TVAS') report. One of the pieces of analysis this included was the calculation of critical yields. Despite it saying that Mr R wanted flexibility to potentially retire early, and this being something that the BSPS2 and PPF allowed, DS&C only calculated the critical yield to match the benefits payable at age 65. So, I don't think it gave him all the information he needed with which to make an informed decision.
- The suitability report said that Mr R was given a copy of the TVAS following the meeting. But it doesn't reference any specific figures from the report. However, the 'initial report' that DS&C sent Mr R, before meeting with him, said that the critical yield to match the benefits the BSPS2 would provide from age 65 was 2.81% and to

match the benefits the PPF would provide at that point was 1.51%.

- The TVAS that was carried out looked at the critical yields three different pension arrangements would need to achieve. And this said to match the full starting pension the BSPS2 would've paid from age 65 the critical yield was between 2.97% and 3.62%. While to match the full starting pension the PPF would pay the critical yield was between 1.75% and 2.41%. Meaning the information in the 'initial report' was somewhat misleading.
- That notwithstanding, based on the regulators lower and middle standard projection rates at the time (2% and 5%), the relevant discount rate and Mr R's attitude to risk, these rates of returns do appear to have potentially been achievable. But, this calculation was not based on the pension that Mr R's benefits were ultimately going to be transferred to – his employer's DC scheme. And again DS&C doesn't appear to have gathered any information about that scheme. So, the critical yield that pension would need to achieve, and whether that was reasonable was unknown.
- Also, if retiring earlier than the normal scheme retirement age was a genuine objective for Mr R, the critical yields were likely to be higher. Because benefits would have to be paid for longer and the investment horizon to retirement was shorter.
- So overall, I don't think the analysis that was carried out is sufficient to say that a transfer and giving up the guaranteed pension Mr R was due, was likely to mean he'd be better off in retirement or that a transfer was in his best interests.
- DS&C said Mr R was interested in retiring earlier than the DB scheme would allow. So, he wanted flexibility to enable this. And it said in the suitability report that the DB scheme was inflexible and would generally not permit this. And even if it did, actuarial reductions would apply.
- The BSPS2 and PPF would've allowed Mr R to access benefits earlier than 65, albeit with actuarial reductions. So, while the statements about these reductions was broadly correct, I think the way this was presented in the suitability report – that early retirement was unlikely to be allowed – was misleading.
- In addition, Mr R was only 41 at the time of the advice. In the fact find, when asked about his retirement needs he said simply to "be comfortable". While it is true it would be difficult for Mr R to know that far from retiring what his needs were likely to be, on the same basis I also think it was difficult for him to have any firm plans for retirement, And while he may have indicated in discussion with DS&C that he aspired to retire early, when asked, I think most people would say they would like to do so. But his circumstances, objectives or aims could've changed over the years that followed.
- It's also worth noting that Mr R's other two pension arrangements, his stakeholder pension and the DC scheme with his current employer – to which he was still contributing – would've given him a degree of flexibility at retirement.
- 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 BSPS2 would've still provided the option to transfer out at a later date if his circumstances required it.
- DS&C said, as Mr R was single, he was interested in being able to leave his pension savings to help his children if he passed away. So, the alternative death benefits

offered by the transfer were useful to him. A pension's primary purpose however is to meet the holder's needs in retirement. Mr R was young and recorded as being in good health. So, there was no reason to believe he wouldn't be reliant on his pension to meet his own needs in retirement into his old age. And so, the legacy that the pension may have provided was likely to be significantly different to the CETV – as it would've been affected by investment performance and any withdrawals Mr R made in his lifetime.

- The other two pension schemes that Mr R was a member of also gave him lump sum death benefits. And if Mr R still wanted to leave a further legacy then life insurance would appear to have been a suitable alternative. This wouldn't have been dependent on investment returns or the amount left in a pension. DS&C says Mr R did not want to consider this option. But again, DS&C's role was to give him objective advice about what was in his interests, not act as an order taker.
- Overall, I don't think different death benefits available through a transfer meant it was in Mr R's best interests. And ultimately DS&C should not have encouraged Mr R to prioritise the potential for alternative death benefits through a personal pension over his security in retirement.
- Mr R had already been asked to make a decision about joining the BSPS2 before he contacted DS&C. He has said a lot of his former colleagues were transferring their pension and he was worried that the BSPS2 could also potentially fail. Which was why he asked DS&C for advice. Which supports that he'd likely opted into the BSPS2 but wanted to know if he'd made the right choice.
- I don't doubt that Mr R was likely to have been worried by what had happened to that point regarding the DB scheme. The consultation was likely to have been unsettling and he may well have had negative feelings about how his deferred pension benefits had been handled. I think that would have been a very natural emotional response to what was happening. But again DS&C's role was to give impartial, objective advice.
- Mr R might've thought consolidating his benefits into his new employer's pension scheme was appropriate. But transferring his benefits into a personal pension or his current employer's DC scheme exposed the pension to market risk which Mr R bore in full. Whereas in the DB scheme the trustees assumed all of the risk and guaranteed to provide a pension of a certain amount to Mr R.
- I don't think there was any evidence at the time to support that Mr R ought to have had genuine concerns about the BSPS2 and its future prospects. There was nothing at the time to suggest it was likely to also encounter difficulties. Rather concerns about this seem to have been driven by the negative sentiment the consultation had created. But I don't think DS&C did enough to objectively address this. For example, in its initial report it also repeated that members thought the continued involvement of the sponsoring employer meant this was 'dangerous' but made no comment on whether this was justified or attempt to address this.
- In any event the PPF still would've provided Mr R with a guaranteed income and the option of accessing his benefits early. So, entering the PPF was not as concerning as Mr R might've thought at the time.
- Because of all of this, I don't think transferring due to these concerns or to have 'control' of his pension was in Mr R's best interests.

Overall, I can't see persuasive reasons why it was clearly in Mr R's best interest to give up

his DB benefits.

DS&C has said that Mr R would always have gone ahead with a transfer and that his mind was made up about this. The suitability report indicated that part of the reason for this was the sentiment at work and because union representatives were encouraging members to transfer. But as I've mentioned already, Mr R had not worked for the sponsoring employer for a long time. So, he wasn't working at the same place of employment, and was unlikely to be involved in regular discussions with colleagues or union representatives. Which I think calls into question the accuracy of its comments about Mr R's attitude.

Mr R might've gone into the discussion thinking transferring was a good idea and thinking that this was what he wanted to do. But DS&C's role wasn't to just facilitate what Mr R might've thought was best. Ultimately DS&C advised Mr R to transfer. And I think he relied on that advice. If DS&C, a professional adviser whose expertise he had sought, had explained why it wasn't in his best interests to transfer I think he'd have accepted that advice.

As a result, I'm upholding this complaint as I think the advice Mr R received from DS&C was unsuitable.

While Mr R has said he can't be certain, he thinks he may well have opted into the BSPS2 as part of the time to choose exercise, before contacting DS&C. He has said he approached DS&C for advice because he wanted to know if he should have any concerns about the BSPS2 – suggesting he'd opted for it. The fact find DS&C completed also made reference to "uncertainty around new scheme" suggesting this is what Mr R had chosen and what he has said about the reasons for seeking advice are correct. There was also a significant amount of negativity around entering the PPF at the time, which prompted a lot of scheme members to choose the BSPS2. Which is something that DS&C also referenced in its initial report. So, on balance I think it's likely Mr R did opt into the BSPS2 before taking advice. So, had he been advised not to transfer, would have remained in that scheme.

Mr R has indicated he thinks any redress calculation shouldn't be carried out by DS&C but rather be done by an independent party, for impartiality. But the regulator has set out guidance for how complaints about unsuitable DB transfer advice should be put right. And businesses, or their appointed appropriate provider, are expected to carry out redress calculations themselves in line with the regulator's guidance. And I think that is an appropriate course of action here.

Our Investigator recommended that DS&C make a payment for the distress caused to Mr R. I haven't seen anything that suggests the advice caused him ongoing distress and inconvenience between when it was given and when he raised his complaint. But I do accept Mr R would likely have been worried to find that the advice might not have been suitable for him, particularly given the circumstances under which he first asked for this advice, when there was a lot of uncertainty regarding the pension scheme. I think finding out about this potential issue has likely caused him some concern, which wouldn't have occurred but for the advice that is the subject of this complaint. So, in the circumstances, I think the recommended award of £300 is fair and reasonable.

### **Putting things right**

A fair and reasonable outcome would be for the business to put Mr R, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr R would have most likely remained in the occupational pension scheme and joined the BSPS2 if suitable advice had been given.



DS&C must therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement PS22/13 and set out in the regulator's handbook in DISP App 4:  
<https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter>.

DS&C, or the appropriate provider it appoints should it do so, should use the FCA's BSPS-specific redress calculator to calculate the redress – which it has indicated it would do. A copy of the BSPS calculator output should be sent to Mr R and the Financial Ombudsman Service upon completion of the calculation together with supporting evidence of what DS&C based the inputs into the calculator on.

For clarity, Mr R has not yet retired, and he has no plans to do so at present. So, compensation should be based on the scheme's normal retirement age, as per the usual assumptions in the FCA's guidance.

This calculation should be carried out using the most recent financial assumptions in line with DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr R's acceptance of the decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, DS&C should:

- calculate and offer Mr R redress as a cash lump sum payment,
- explain to Mr R before starting the redress calculation that:
  - the redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
  - a straightforward way to invest the redress prudently is to use it to augment his DC pension
- offer to calculate how much of any redress Mr R receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr R accepts DS&C's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr R for the calculation, even if he ultimately decides not to have any of his redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr R's end of year tax position.

Redress paid to Mr R as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, DS&C may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr R's likely income tax rate in retirement – presumed to be 20%. So, making a notional deduction of 15% overall from the loss adequately reflects this.

In addition, DS&C should pay Mr R £300 for the distress caused by the disruption to his retirement planning.

### **My final decision**

I uphold this complaint and require David Stock & Co Limited to carry out the steps outlined in the 'putting things right' section of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 5 February 2024.

Ben Stoker  
**Ombudsman**