DRN-4107288

Financial Ombudsman Service

The complaint

Mr V complains that he was given unsuitable advice by David Stock & Co Limited ('DSC') to transfer the benefits from his defined benefit ('DB') scheme with British Steel ('BSPS') to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

In March 2016, Mr V's employer announced that it would be examining options to restructure its business, including decoupling the BSPS (the employer's 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.

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 V's employer would be set up – the BSPS2.

In early August 2017, Mr V was recommended to DSC by a friend. A few informal discussions between Mr V and DSC around the pros and cons of transferring Mr V's DB scheme pension were undertaken. DSC produced an 'interim report' on 9 August 2017 which was subsequently amended and reissued on 20 August 2017 and again on 22 August 2017. The reports confirmed that DSC didn't feel, based on Mr V's current circumstances, that a transfer of Mr V's DB scheme benefits was something it could recommend.

On 16 August 2017, the provider of the personal pension DSC was considering recommending to Mr V sent him a transfer value analysis report ('TVAS'). The report stated Mr V needed to achieve an annual investment return of 7.5% on his personal pension in order to be able to match the benefits offered by the BSPS at the scheme's normal retirement age of 65.

On 31 August 2017 DSC completed a fact-find to gather information about Mr V's circumstances and objectives. It was noted on the fact-find that Mr V was aged 49 and that his wife was aged 61; they had no dependents. DSC also noted that Mr V had a total annual income of £41,000; no income details were noted for Mrs V. Their home was documented as being mortgage free (Mr V later told this Service it had a value of £140,000 at the time of the advice). DSC further noted that Mr V had a personal loan for £10,000 with two years left to run as well as holding £13,000 in his current account and a further £70,000 held in ISAs. Finally it was recorded that Mr V had a share in a second property (this was valued at approximately £100,000).

DSC also completed a risk profile report with Mr V but the agreed risk level was left blank.

Although it wasn't recorded by DSC at the time of the advice, Mr V has subsequently told us that in August 2017 he had another personal pension plan worth £72,000 as well as being a

member of his employer's new defined-contribution ('DC') pension scheme (to which they were both contributing a percentage of Mr V's salary each month).

DSC also recorded on the fact-find that Mr V's retirement objectives were to retire at age 55 with an income of £20,000 with no requirement for any tax-free cash. It was further noted that it was important to Mr V that his estate passed to his wife.

On the same day as the fact-find was completed, Mr V signed a typed letter confirming he had received full details about the negative aspects of transferring his DB scheme and that he understood the significance of the critical yields he had been given. The letter also stated that Mr V regarded having control of his pension as providing him and his family with security.

In September 2017, the DB scheme administrators sent Mr V information about his entitlement under his current DB scheme including a cash equivalent transfer value ('CETV') illustration. The CETV stated that Mr V had 9 years and 1 month of pensionable service in the DB scheme and that the total transfer value of his benefits was £114,061.29.

DSC wrote to Mr V later in September 2017 to ask him whether he wished to proceed with the transfer now he had received his revised CETV despite the fact he had previously asked it to put the transfer on hold. Mr V replied to say that he wanted to transfer his DB scheme benefits. On the same day Mr V signed the BSPS discharge forms and personal pension application forms.

The personal pension application form noted that Mr V's intended retirement age was 65, that the investment was to be placed 100% into the sterling liquidity fund and that Mrs V was to be the sole beneficiary in the event of Mr V's death.

In October 2017, members of the BSPS were sent a "Time to Choose" letter which gave them three options; to either stay in BSPS and move with it to the PPF, move to the 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).

The transfer took place on 4 December 2017.

In September 2022, Mr V complained to the Financial Ombudsman Service. He said he was concerned he may have received unsuitable advice from DSC to transfer his DB scheme. Mr V also said he was worried he had suffered a significant financial loss.

We referred Mr V's complaint to DSC. DSC looked into it and issued him with its final response letter in November 2022. DSC said it had provided Mr V with suitable advice which was in line with his attitude to risk as well as his financial goals and objectives. DSC also said it had provided Mr V with sufficient information from which he was able to make an informed decision. And it said it had followed the correct processes as well as complied with the regulator's rules and guidance. DSC said it hadn't done anything wrong and was not upholding Mr V's complaint.

Unhappy with the outcome of DSC's investigation, Mr V asked the Financial Ombudsman Service to investigate the complaint he had made.

One of our Investigators looked into Mr V's complaint for him, issuing his view in March 2023. Our Investigator thought Mr V's complaint should be upheld because the advice from DSC to transfer was unsuitable based on Mr V's circumstances as they stood at the time. More specifically he didn't think DSC's provision of risk warnings made its advice suitable.

And he thought it was both too soon to advise Mr V to make an irreversible transfer and that there was no specific need at that point to do so.

Our Investigator also noted that the documentation from the time of the advice didn't support some of the reasons DSC had cited in its final response in support of its position that it had provided Mr V with advice that was in his best interests. Whilst DSC had said in its final response letter that Mr V had wanted to be able to leave his pension fund to a beneficiary of his choice, the documents from the time of the sale made no reference to any such objective, nor to any discussion about why the death benefits associated with a personal pension were preferable, in Mr V's circumstances, to those offered by his DB scheme.
Our Investigator also noted that DSC, despite recording that Mr V wanted to retire at age 55, failed to provide Mr V with the annual investment return (also known as the critical yield) his fund would need to achieve if he were to do so. So our Investigator said Mr V hadn't had this information available to consider.

Our Investigator concluded that DSC should have advised Mr V to remain in his DB scheme and move with it to the BSPS2 so he recommended that DSC should calculate whether Mr V had suffered a loss as a result of its advice to transfer using the regulator's (the Financial Conduct Authority – 'FCA') recently developed BSPS-specific redress calculator to calculate if redress was due to Mr V.

DSC accepted our Investigator's findings and agreed to undertake a redress calculation using the FCA's BSPS-specific redress calculator; the calculation showed that Mr V hadn't sustained a financial loss.

Having checked the redress calculation, our Investigator wrote to Mr V to say it had been carried out correctly. Our Investigator said that there was no shortfall in Mr V's pension and that he was on track to be able to replicate his DB scheme benefits in retirement.

Mr V advised our Investigator that he wasn't happy with the outcome of his complaint because it was based on current market conditions which could change to his detriment in the future. Our Investigator thought about what Mr V had said and explained that DSC had done exactly as required by the FCA in terms of calculating whether he was due any redress. Our Investigator explained that Mr V could either accept the calculations or ask for an Ombudsman's decision.

Mr V asked for his complaint referred for an Ombudsman's final decision.

Whilst the complaint was waiting to be allocated to an Ombudsman, DSC carried out the calculation again as the previous one had by now expired; the calculation again showed that Mr V had suffered no loss.

The complaint has now been passed to me.

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.

As I have set out above, DSC informed us in May 2023 that it was willing to accept our Investigator's findings. As the suitability of the advice is no longer in dispute, I'll focus my decision on the redress methodology.

Before doing so, and for the sake of completeness, it is worth stating that I have noted Mr V's comment that he could be unfairly disadvantaged by having his complaint assessed

right now should the financial market conditions shift in the opposite direction at some future point thereby potentially leaving him at a disadvantage. Mr V has said that whilst favourable financial market conditions currently mean he is better off as a result of the transfer, should that change in the future then the unsuitable advice he received could still cause him financial detriment.

I fully appreciate the point that Mr V is making here but DSC has done exactly what the FCA has required it to do. DSC has followed the FCA's guidance in terms of calculating redress and is not required to do anything more. The Financial Ombudsman Service is unable to keep a case open indefinitely and can only consider complaints on the facts as they stand at the point in time they are brought to us. We are unable to compensate consumers for hypothetical future losses. So whilst I can see the point Mr V is making here, I can't reasonably require DSC to do any more than the FCA requires it to do.

Putting things right

The aim is to put Mr V back in the financial position he would have been in at retirement had he remained in the DB scheme. DSC carried out a calculation using a specific BSPS calculator provided by the FCA which is what I would expect them to do in the circumstances.

The calculator uses economic and demographic assumptions to calculate how much a consumer needs in their pension arrangement to secure equivalent BSPS retirement benefits that they would have been entitled to under either BSPS2 or the PPF (as uplifted to reflect the subsequent buy-out), had they not transferred out.

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 determines.

The BSPS calculator has been developed by actuaries and is programmed by the FCA with benefit structures of the BSPS, BSPS2 and PPF (including the impact of the subsequent buy-out) and relevant economic and demographic assumptions which are updated 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.

I have checked the inputs that were entered by DSC which are personal to Mr V. These include Mr V's 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. This is in line with the Investigator's recommendation and what the FCA suggests will usually be a reasonable assumption – and I think this is fair here.

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 V's case shows that there is no shortfall to his pension and that he has sufficient funds to be able to replicate his DB benefits in retirement. So, I'm satisfied that Mr V has not suffered a financial loss by transferring his pension. Overall, I think the calculation carried out by DSC is appropriate in the circumstances and no redress for financial losses is due to Mr V.

My final decision

My final decision is that I uphold this complaint. As David Stock & Co Limited has already undertaken a redress calculation, which shows Mr V has not suffered a loss as a result of the unsuitable pension transfer advice he received, no further action is required.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 1 March 2024.
Claire Woollerson
Ombudsman