DRN-4588765

Financial Ombudsman Service

The complaint

Mr D 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 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 D'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 D's employer would be set up – the BSPS2.

In September 2017, the DB scheme administrators sent Mr D information about his entitlement under his current DB scheme including a cash equivalent transfer value ('CETV') illustration. The CETV stated that Mr D had 25 years and 5 months of pensionable service in the DB scheme and that the total transfer value of his benefits was £394,560.61.

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).

Also in October 2017, Mr D met with DSC because he had concerns both about the stability of his employer and about his pension being in control of the BSPS trustees. The initial meeting between Mr D and DSC was of an 'educational' nature where he was provided with non-specific generic information about DB and DC (defined contribution) pension schemes. DSC also made Mr D aware that transferring his DB scheme was likely to be unsuitable for him.

Mr D confirmed to DSC that he wished to proceed and a second meeting went ahead where DSC completed a fact-find to gather information about Mr D's circumstances and objectives.

It was noted on the fact-find that Mr D was aged 52, that his wife was aged 55 and that they had one financially dependent child. Mr D also had two non-financially dependent stepchildren. It was also noted that Mr D had a total annual income of £38,000 and that Mrs D earned £16,000 a year. Their home was documented as being valued at £180,000 with an outstanding repayment mortgage of £63,000 costing £730 per month and which had 8 years to run. Mr D had credit card debt of £4,000. In addition Mr D had savings of between £4,000 and £5,000. It was further noted that Mr D had two other small personal pensions

(combined total value £20,545) which he wished to transfer and that he and his employer were contributing 16% of his salary per month to his employer's new DC pension scheme. Mrs D was a member of her employer's occupational pension scheme. Finally it was recorded that Mr D's target annual income in retirement was £20,000.

Mr D's objectives for transferring his DB scheme were also noted. These were: that he no longer trusted his employer so wanted to move away from the BSPS and to have control of his pension plan; he wanted the option to retire early at age 57; that he wanted choice and flexibility on how he drew his pension funds and to take advantage of the flexible death benefits associated with a personal pension plan.

DSC also completed a risk profile report with Mr D assessing his attitude to risk ('ATR') as 'cautious to moderate'.

On the same date as the fact-find was completed, DSC provided Mr D with a pension transfer report ('TVAS'). The TVAS showed that Mr D could expect an estimated annual pension at the DB scheme's normal retirement date ('NRD') of £20,860. It was also stated in the report that Mr D needed to achieve an annual investment return of 4.29% on his investment (if he drew all his benefits as a pension) in order to be able to match the benefits offered by the BSPS at the scheme's NRD of 65.

DSC said it provided Mr D with a suitability report explaining its recommendation but no copy has been provided.

On the same date as the fact-find and TVAS were produced, Mr D signed the application forms to transfer his DB scheme, along with his two small personal pensions, to a SIPP with a provider I shall call 'L'. Mr D's personal pensions were transferred to the SIPP with L in early November 2017 and his DB scheme was transferred in early December 2017. DSC's fee for arranging the transfer was £3,945 and was deducted from the transferred funds.

In September 2020 Mr D withdrew tax free cash ('TFC') of £65,054 from his SIPP and in May 2021 he withdrew £49,206. Mr D was aged 55 at the time of both withdrawals.

On 24 March 2022, Mr D complained to DSC. He said that he was concerned he had received unsuitable advice. DSC looked into Mr D's complaint, issuing him with a final response letter on 15 May 2022. DSC said it had provided Mr D 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 D with sufficient information from which he was able to make an informed decision. DSC added that Mr D had since accessed money from his SIPP which showed that the transfer had achieved his objectives. Finally, DSC 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 D's complaint.

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

One of our Investigators looked into Mr D's complaint, issuing his findings in October 2022. Our Investigator said he thought the transfer had not been in Mr D's best interests and that he was likely to receive benefits of a materially lower overall value than those provided by his DB scheme based on him investing in line with his ATR. So he didn't think that the transfer was a financially viable one. Further, our Investigator said DSC hadn't established what Mr D's income needs were likely to be at age 57 or how much income his DB scheme would provide at the same age either. This being the case, our Investigator said he was unable to agree that Mr D had a need for flexibility as to how he drew his pension benefits.

Our Investigator also thought the alternative death benefits available through the personal pension weren't worth Mr D giving up the guarantees associated with his DB scheme for. And he said that DSC wasn't just there to transact what Mr D may have felt he wanted but rather to understand what was in his best interests and make a recommendation accordingly.

Our Investigator concluded that DSC should have advised Mr D to remain in his DB scheme and move with it to the BSPS2. This was because Mr D had said at the time of the advice that he had no need for tax-free cash. That being the case, our Investigator thought that Mr D would have chosen to move to the BSPS2 rather than the PPF so that he could have benefitted from the higher starting income it would have offered. Our Investigator recommended that DSC undertake a redress calculation in line with the regulator's (the Financial Conduct Authority – 'FCA') pensions review guidance FG 17/9 in order to calculate whether Mr D had suffered a loss as a result of its advice to transfer. The Investigator also recommended that DSC should pay Mr D £200 to address the distress and inconvenience caused by the receipt of its unsuitable advice.

In November 2022 DSC replied to say that it had carried out a loss calculation using the FCA's guidance in FG 17/9 and based on a retirement age of 55; DSC said the calculation showed that Mr D was better off by just over £49,000. It also said that it was willing to pay the compensation of £200 recommended by our Investigator.

Mr D accepted that the complaint should be upheld but he also said that any redress should be calculated based on the DB scheme's NRD of age 65. Mr D said he accepted that he had accessed TFC at age 55 but said if he had been suitably advised he never would have done so. Mr D said he was not made aware of the implications of the early withdrawal; suitably advised, he said he would have opted to move to BSPS2 and have accessed his benefits at age 65. Mr D also explained that he had no fixed retirement plans at the date of the advice, nor had his retirement needs been explored by DSC. Mr D said he was still working with no plans to retire. So, he said the redress calculation should ignore the fact he had taken TFC and instead be based on a retirement age of 65 when calculating if any loss had been suffered.

Furthermore, Mr D said that DSC hadn't stripped out the two personal pensions plans he had transferred from its redress calculation the effect of which was that the SIPP was overvalued in terms of its investment performance. Mr D asked if DSC could revise the redress calculation based on him retiring at age 65 and by stripping out his two transferred personal pensions.

Our Investigator put Mr D's points to DSC. In February 2023, DSC responded and said it disagreed that the redress calculation should be based on any other age than 55 as it said this was the point Mr D had accessed his pension. It also said its redress calculation had factored in the effect Mr D's two personal pension plans had had on his SIPP's investment performance.

In June 2023 Mr D said that DSC may need to seek actuarial support when undertaking any redress calculation on account of the fact that he had transferred not only his BSPS DB scheme benefits to the SIPP but two personal pension plans as well.
In November 2023 the Financial Ombudsman Service let DSC know that the FCA had now developed a BSPS calculator for firms to use when calculating redress for both BSPS consumer redress cases as well as non-scheme cases such as Mr D's. As DSC had already shown itself willing to undertake a loss calculation for Mr D, we asked it to carry out an up-to-date calculation using the BSPS calculator; DSC agreed to run the calculation.

In December 2023 DSC sent us its redress calculation, based on Mr D joining BSPS2 and retiring at age 65. The calculation took account of the fact that Mr D had also transferred two personal pension plans to the SIPP and that he had made two TFC withdrawals.

Our Investigator told Mr D that he had checked the calculation and that it had, in his view, been carried out correctly. Our Investigator said that there was no shortfall in Mr D's pension and that he was on track to be able to replicate his DB scheme benefits in retirement. Our Investigator said that DSC's offer to pay Mr D £200 compensation for the distress and inconvenience he had been caused was in line with awards made by the Financial Ombudsman Service in similar complaints.

Mr D advised our Investigator that he didn't accept DSC's offer and wanted his complaint referred for an Ombudsman's 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 understand DSC hasn't conceded that the advice it gave Mr D was unsuitable. Nonetheless, in order to conclude the matter, it's already carried out loss calculations. So I don't see the need to address the suitability of its advice to Mr D in detail.

That said, I will comment that I agree with our Investigator's view that the advice was unsuitable for broadly similar reasons. In particular I've been mindful that the FCA's guidance for advising firms is that they should assume that a transfer from a DB scheme is unsuitable and they should only recommend one where they can clearly show, based on contemporary evidence, that it was in the consumer's best interests. I don't think that was the case for Mr D. That's because, amongst other things:

- Mr D was likely to receive benefits of a materially lower overall value than those provided by his DB scheme based on him investing in line with his ATR. I can't see that DSC established that the transfer was a financially viable one. I say this particularly because there was no attempt by DSC to interrogate what Mr D's income needs in retirement were likely to be. In addition, Mr D had eight years left to run on his mortgage but I can't see that DSC established if he could afford to retire before it had been paid off.
- DSC didn't establish how much income Mr D's DB scheme would provide at either age 57 or the scheme's NRD of 65. Without such information I can't agree that Mr D needed flexibility around how he drew his pension benefits or understood how his scheme benefits might compare financially to the funds he could potentially draw from his SIPP.
- Mr D didn't need to improve on his BSPS benefits in order to attain the income he stated he needed in retirement; his scheme benefits would have comfortably provided him with the retirement income he said he envisaged needing.
- The difference in death benefits from a personal pension wasn't worth giving up the guarantees offered by the DB scheme for. That's especially the case as both the BSPS2 and PPF's own death benefits were guaranteed and didn't rely on investment growth or how much was left in his pension pot at the date of his death.
- Mr D didn't need to give up the guaranteed benefits of his DB scheme in order to take early retirement or have flexible access to his pension funds. That's because Mr D was both a member of his employer's DC scheme and had two personal pensions which provided him with the flexibility he claimed he needed – he wasn't committed to take its benefits in a set way. Mr D was aged only 52 at the time of the advice so had 13 years to go before retirement during which he would have built up a significant fund in his employer's DC scheme which he would be able to access flexibly at whatever age he

chose to retire. I can't see that DSC explained to Mr D that there was no requirement for him to give up the safeguarded benefits from the DB scheme in order to have some flexible access to retirement funds.

- Had he the need to do so, Mr D could have taken lump sums from his DC scheme/personal pensions as and when required and adjusted the income he took from them according to his needs. So I think that if Mr D retained his DB pension, this combined with his new workplace pension and his existing personal pensions, would have likely given him the flexibility to retire early - *if* that was what he ultimately decided.
- I understand that Mr D may have legitimately held concerns about how his employer had handled his pension and that he thought it would be better if he had 'control' of his pension benefits. But it was DSC's role to objectively address those concerns and to explain to him that he wasn't severing links with his employer in any event as he remained a member of his employer's new DC scheme.

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

Putting things right

Given that DSC has already carried out redress calculations, the issue now isn't the suitability of its advice but whether or not it's done enough to put things right. Mr D is of the opinion it hasn't.

The aim of redress is to put Mr D 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.

I've noted the comment Mr D made in response to our Investigator's view that DSC may need to seek actuarial support when undertaking any redress calculation in relation to his complaint. DSC has explained that it has run the calculation by working out what percentage of the current SIPP valuation reflects the amount transferred from Mr D's BSPS DB scheme. It has shown us how it has calculated that percentage and I can see that the BSPS DB scheme was the third and final amount transferred to Mr D's SIPP a month after his two personal pensions were transferred. I can see that the BSPS DB scheme accounted for 94.82% of the total sums transferred in 2017.

I understand the approach DSC used to apportion the values of Mr D's SIPP to reflect the relevant contributions (along with, in this case, the withdrawals) is accepted actuarial practice. So, I don't think there's any requirement for DSC to appoint an actuary. I'm satisfied the way it arrived at the defined contribution value for the BSPS part of the transfer is fair and reasonable.

The BSPS 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 D. These include Mr D'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. For the sake of completeness I note that DSC based the calculation on the amount transferred net of advice fees whereas it should have been based on a gross amount. Given the size of the gain Mr D has made (an amount in excess of £75,000) as a result of the transfer, this has had no material bearing on the overall outcome 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 D'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 D 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 D.

I think DSC's offer to pay Mr D £200 for the distress and worry he experienced as a result of realising he was unsuitably advised to move his DB scheme and that he could have suffered a financial loss as a consequence, is fair and reasonable in the circumstances. I've also thought about compensation awards that I've made in complaints with similar circumstances and I'm satisfied that this award is in line with those and with the Financial Ombudsman Service's approach to compensation in general.

My final decision

My final decision is that I uphold this complaint and require David Stock & Co to pay Mr D compensation of £200 for the worry he says this matter has caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 8 March 2024.

Claire Woollerson
Ombudsman