

The complaint

Mr W 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 self-invested personal pension ('SIPP'). He says the advice might not have been suitable for him and may have caused a financial loss.

Professional representatives have helped Mr W to bring this complaint. But, for ease of reading, I will refer to the representatives' comments as being Mr W's.

What happened

On 23 February 2024 I issued a provisional decision. For ease of reference I've copied the relevant extracts below. I said:

"What happened

In March 2016, Mr W'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 W'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 W details of his DB pension's enhanced cash equivalent transfer value, which was £107,389.

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 following month, November 2017, Mr W approached DSC for advice about his pension. DSC gathered some limited information about him. It then issued an "initial report". Amongst

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.

other things it noted he was 39 years old, working, living with his partner, unmarried with two dependent children. It said Mr W's preferred retirement age was 58. It set out its understanding of the scheme and the reasons some members were attracted to a transfer. It said if Mr W understood the advantages and disadvantages of a transfer, it could assist him in selecting an investment fund that suited him.

Later that month DSC met with Mr W and it conducted a more detailed fact-find. At that meeting, Mr W completed the relevant forms to transfer his DB benefits to a SIPP DSC recommended.

In December 2017 DSC sent Mr W its suitability report setting out its analysis and the reasons for its recommendations. It appended another report in which it recommended the assets Mr W should invest in to be held within his SIPP.

Mr W accepted DSC's recommendations and the transfer concluded in 2018.

In 2022 Mr W complained to DSC that its advice may not have been suitable for him. DSC didn't reply within the timeframe set out by the regulator to do so.

Mr W then asked the Financial Ombudsman Service to look into his complaint. One of our Investigators considered it. She didn't think DSC's advice was in Mr W's best interests. So she recommended DSC establish if Mr W had suffered a financial loss as a result of its advice. Our Investigator also recommended DSC make a payment of £300 to address Mr W'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 for 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 W 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 W 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 W retiring at age 57. It said the calculation showed that Mr W hadn't suffered a loss. We put that to Mr W but he didn't accept it. Amongst other things he thought DSC should use a retirement age of 65.

More recently, we wrote to the parties again. We said 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 said it would request the required information to carry out the calculation and contacted Mr W in order to do so. Mr W provided some of the information required for DSC to perform the calculation. But, he hasn't supplied all the evidence required. So, DSC hasn't been able to make the necessary calculation.

Mr W told us that he doesn't believe the BSPS calculator is capable of calculating redress in his specific circumstances. That's because he says one of his dependent children, who I'll refer to as G, has disabilities which mean she will be dependent on him for the rest of her

life. Mr W said, in those circumstances, on his death the BSPS2 would have paid G a dependent's pension for the remainder of her life but that the FCA's calculator doesn't factor those circumstances in. He added that he doesn't believe that £300 is sufficient to address his distress and inconvenience in the circumstances.

The matter has since been referred to me to make a final determination.

What I've provisionally 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 redress. Indeed in correspondence with this office it asked if, in an effort to speed matters up, it could now accept the Investigator's assessment of the complaint in which she found that its advice was unsuitable. In those circumstances, I don't see the need to examine the suitability of its advice to Mr W in detail. Save to say that I agree that the advice wasn't suitable for broadly similar reasons to those our Investigator gave.

In particular I don't think Mr W needed to make a decision to transfer when he did. Both the PPF and the BSPS2 would allow Mr W to take early retirement if that's what he decided to do, nearer to his early retirement age. And, if Mr W 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 W was only 39 years old at the time of the advice. He was still over 18 years to his preferred retirement age and almost 26 years to the DB scheme's normal retirement age of 65. 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 W's best interest to give up his DB scheme guarantees.

Putting things right

A fair and reasonable outcome would be for DSC to put Mr W, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr W would most likely have remained in the DB scheme and moved with it to the BSPS2 if DSC had given suitable advice.

DSC 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>.

DSC has already offered to carry out such a calculation using the FCA's BSPS calculator, which has been designed specifically to establish if BSPS members like Mr W have suffered a financial loss as a result of a DB transfer.

Mr W has said the FCA's calculator is not an appropriate tool in his situation as it can't make the adjustments required to allow for additional benefits he may have been entitled to owing for G's additional needs. He's also said that any additional benefits payable to allow for her

needs should not be offset against any surplus he might have otherwise accrued as a result of the transfer. He said that was because in order to replace the survivors' benefits he will have to buy life insurance.

I'll briefly explain that the BSPS2 rules allow for scheme trustees to authorise additional survivors' benefits to be paid on the death of the scheme member to a child who suffers from a disability which makes them dependent on others. The trustees have discretion to decide the period the survivors' benefits are paid for.

So I need to consider whether or not, on balance, the trustees would have awarded survivors' benefits in respect of G.

I asked Mr W to supply evidence of G's medical conditions and her support needs. Mr W has shared with us information from clinicians, a report from G's school and a statement of her educational needs from the City Council's Chief Educational officer. That evidence clearly shows that G, who is in her teenage years, has complex medical needs. Those cause her to need help to do what others may consider 'everyday' tasks. For example she isn't independently mobile, can't sit unaided and is entirely dependent on others for all of her personal care needs including feeding. From the information supplied it seems extremely unlikely that G will develop to be able to look after herself and will remain wholly or substantially dependent on others.

After careful consideration I think it's more likely than not that, if presented with evidence of G's needs, the BSPS2 trustees would conclude that G would be entitled to a survivors' benefit into her adulthood.

So, I think in order to treat Mr W fairly, any redress calculation would need to factor in an allowance for a survivors' benefit for G, following Mr W's death in retirement. I understand that, when calculating Mr W's entitlement from the BSPS2 or the PPF, the FCA's calculator won't factor in survivors' benefits. And, in those circumstances I agree with Mr W that the FCA calculator is unlikely to be entirely appropriate. Therefore, in line with the FCA's guidance in DISP App 4, in order to make that calculation DSC will need to use an actuary or an approach approved by an actuary when doing the redress calculations. It follows that, unless DSC has a suitably qualified actuary on staff it will need to instruct an independent actuarial firm to make the redress calculation.

That said, I'm aware that there will most likely be other factors which the actuary might need to account for in order to fairly calculate the redress owing. For example, if Mr W had remained in the scheme it's likely that the trustees would have only been required to assess how long any survivors' benefits should be paid for at the point of Mr W's death. Clearly, that's not something that can be done now. I'm also aware that, sadly, the complex health conditions which G suffers from may affect life expectancy. And life expectancy is likely to be one of the aspects of an actuarially approved redress calculation. So, in order to address matters as simply as possible I would propose that DSC select one of the following two methods of establishing G's mortality age for the calculation.

Method one, the actuaries concerned should use standard mortality assumptions, unaffected by G's health conditions, based on the year of her birth.

Method two, if DSC doesn't accept the above method, then the actuaries it instructs could specify the medical information they require in order to fairly apply G's mortality assumptions. If the information required involves a medical assessment that carries a fee(s),

DSC will be required to pay that fee(s). If DSC refuses or in any way objects to the fee(s), then the actuaries should use method one set out above for the redress calculation.

I'm aware that method two would possibly require Mr W and his partner to consent to the appropriate medical assessment – or the release of the required medical records – to the actuaries, on G's behalf. I understand they may find this intrusive. However, had Mr W remained in the BPS2, it's likely the trustees would have required similar information before agreeing to pay survivors' benefit for a specified period at the appropriate time. So I think this is fair.

If Mr W doesn't agree to the actuaries having access to the required medical information, or to submit G to an appropriate medical assessment, then DSC may calculate redress without factoring in survivors' benefits for G and using the FCA's BPS calculator. In those circumstances Mr W would be required to provide the necessary information to enable DSC to calculate redress without unreasonable delay.

I think the above proposals are fair to both Mr W and DSC.

For completeness DSC suggested that Mr W might not qualify for this survivors' benefit as he and G's mum are not married and G has her mother's surname. But Mr W said G was his daughter and dependent when completing the fact-find in 2017. And he is named as G's parent on her educational needs statement. Further, the trust deeds say that, for the purposes of the appropriate rules the child in relation to the member includes anyone who stood "in loco parentis", that is anyone who acts as, or in place of, a parent. I'm satisfied that such a definition would reasonably cover Mr W's position. So I haven't asked him to supply a birth certificate to show he is G's biological father.

I'll add that I don't agree with Mr W that any additional sum for survivors' benefits should be paid separately and can't be offset with the rest of the loss calculation. The value of the survivors' benefits should be added to the DB values as generated by the FCA calculator.

Buying a life insurance policy now to benefit G would not replicate the survivors' benefits as I'm aiming to redress a survivor's benefit should he die after retirement. The loss calculation would work out how much it would cost to buy an annuity replicating his DB income at 65 and the value of a dependent pension. If there is a gain then Mr W can use this additional money to make provisions for G should he die after retirement.

For clarity, Mr W 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 of 65, 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 PS22/13 and 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 W'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, DSC should:

- calculate and offer Mr W redress as a cash lump sum payment,*
- explain to Mr W 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 W receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr W accepts DSC's offer to calculate how much of the redress could be augmented, request the necessary information and not charge Mr W for the calculation, even if he ultimately decides not to have any of the redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr W's end of year tax position.

Redress paid to Mr W 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, DSC 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 W'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.

DSC has offered to pay £300 to address the distress and inconvenience this matter has caused Mr W. He doesn't think that is enough. He's told us that the impact of the unsuitable advice and in particular the loss of death benefits for G has caused him sadness, uncertainty and worry. I don't doubt that's the case particularly given the insecurity of the situation at the time Mr W sought advice. But I think it's likely that, even some of those BPS members who didn't take advice and remained in the scheme suffered similar worry, wondering if they'd made the right choice. I think that was possibly a consequence of the circumstances they found themselves in.

However, I do think the situation concerning survivors' benefits has likely made the situation worse for Mr W. It's not clear whether DSC was aware of G's extra needs at the time it gave Mr W advice, as there's no mention of those needs on its file. But, I accept that the uncertainty Mr W's experienced as a result of DSC's advice has most likely been exacerbated when he discovered that G had potentially lost out on additional benefits she might have received had he remained in the scheme. I'm also conscious Mr W wouldn't have experienced the same level of upset had he done so. Therefore, in Mr W's circumstances, I think a payment of £500 to address his distress is fair and reasonable."

Developments

In reply to my provisional decision DSC again said that a transfer to a personal pension was suitable for Mr W. It said Mr W wasn't married and the BPS2 didn't include unmarried partners as dependents. It said G's situation made for a stronger argument that transferring to a personal pension was suitable for Mr W.

DSC added that Mr W had no intention of marrying in the future. It said that had Mr W joined the BPS2 on his death the trustees would require additional information concerning who was named on G's birth certificate or whether she was formally adopted. DSC also said the trustees would also require more information regarding the extent of her disability and her life expectancy. DSC said it would need to make further enquiries in order to resolve the

matter. It commented that the Financial Ombudsman Service was reluctant to question the validity of “the claim”. It said we should request the relevant information now.

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.

DSC said that as Mr W is unmarried and the BSPS2 doesn't automatically pay dependents' benefits to unmarried partners a personal pension would be more suitable for him. But I disagree. DSC said Mr W has no plans to marry in the future, although that isn't recorded anywhere on the file I've seen. But, as I said in my provisional decision, at the time of the advice Mr W was still at least 18 years away from retirement, and remains at least 11 years away now. A lot could happen in that time and he could potentially decide to marry during that period. If he did so then his wife would have become entitled to a spouse's pension which could be of value to her in the event of Mr W's death.

Further, as I've said above, in order for G to be entitled to a survivors' benefit Mr W doesn't need to be married to her mum nor does he need to be her biological father. Instead there would need to be evidence that G was wholly or substantially dependent upon Mr W for the provision of the ordinary necessities of life. I addressed this point in my provisional decision. Mr W named G as his dependent when completing DSC's fact-find in 2017. And the relevant official from Mr W's local city council named Mr W as having parental responsibilities for G in an educational needs statement signed on behalf of the council's Chief Education Officer. So, I'm satisfied that Mr W has parental responsibilities for G that makes her wholly or substantially dependent on him. In those circumstances I'm persuaded that G meets the requirements to be entitled to survivors' benefits as per the terms of the BSPS2 Deed and Rules. So I don't require Mr W to submit G's birth certificate or other paperwork as that isn't needed

DSC also said the Financial Ombudsman Service was *reluctant* to request the relevant information to verify that G would have survivors' benefits entitlement. But, in fact the opposite is true. As I explained in my provisional decision I had already requested the relevant evidence from Mr W. He provided both medical and educational reports which described the extent of G's complex medical conditions, how these affect her day-to-day abilities and the support she needs as a result. So it's certainly not the case that we've been reluctant to gather the appropriate evidence. We already have it on file.

Having considered that evidence very carefully, I think it's more likely than not that G would have an entitlement to a survivors' benefit from the BSPS2 at the date of Mr W's death. So Mr W does not need to submit further evidence, nor will DSC need to make further enquiries. Save that is to request any information the actuaries might require under “method two” as set out under the heading of “Putting things right” in my provisional decision.

I'll return to DSC's argument that, given Mr W's situation, a personal pension was more suitable for him than joining the BSPS2. As I've already said I disagree. Even if Mr W decides not to marry before retirement, for the reasons given above, I'm satisfied that G would have had entitlement to index linked survivors' benefits from the BSPS2. Those would be payable for the rest of her life, increasing each year with indexation. In contrast Mr W could leave whatever remained in his personal pension to his nominated beneficiaries. But, the sum remaining on his death would be dependent on investment returns. And, if his

investments had a prolonged period of poor performance or suffered losses that could significantly deplete the amount remaining.

Also, the fund would continue to reduce as Mr W drew money from it. So if he took large sums early in his retirement or lived a long life then there would be a smaller sum, if anything, left to leave as a legacy to G on his death. It follows that I don't agree that Mr W's situation meant that a personal pension was better for him. And I don't intend to depart from my provisional decision.

My final decision

I uphold this complaint and require David Stock & Co Limited to carry out the redress calculations and pay any compensation owing to Mr W as set out in my provisional decision, copied above, under the heading of "Putting things right". It must also pay him £500 for the distress and inconvenience he's experienced.

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

Joe Scott
Ombudsman