DRN-3497398

The complaint

Mr A says the advice given and the arrangements made by Independent Financial Services 4 You Ltd (IFS4Y), trading as Expat IFA Ltd, resulting in the transfer of his defined benefit (DB) pension to an alternative provider was unsuitable.

What happened

Mr A says that while working in Dubai in 2016 he was approached by a local financial adviser, Prestige Wealth Services (PWS) about his pension arrangements. He says that the adviser was a persuasive and charismatic individual who quickly gained his trust. He says the adviser addressed all his questions optimistically. Mr A says the adviser guided him in terms of what to say in completing certain documents.

IFS4Y points to a member information form issued by his DB pension provider, which Mr A signed on 6 September 2016. This recorded that he started planning for his retirement and taking advice, he reviewed the market and contacted a number of potential advisers. PWS was recommended, he'd engaged it and it was responsible for progressing matters for him.

At the time of the events complained about PWS wasn't regulated by the Financial Conduct Authority (FCA). IFS4Y notes that it was covered by the Dubai financial regulator.

PWS gathered information from Mr A about his circumstances and objectives. These were summarised in the following terms:

- Mr A was British and married. He had three non-dependent children. He was 49, currently working in Dubai, had been overseas since 2014 and intended to remain so for the foreseeable future. When he retired this was likely to be in the UK.
- Mr A was said to feel that the most important aspect of his pensions were the benefits for his spouse and children and the level of income on an annual basis.

Mr A's main pension was an OPS. He'd accrued benefits over 24 years of service with the same employer. This comprised two elements. A defined benefit (DB) scheme which had a cash equivalent transfer value (CETV) of around £291,042. When this scheme had been closed he joined his company's money purchase scheme to which both he and his employer contributed. According to PWS's report, at the time the defined contribution (DC) element of his main pension was worth around £213,742.

Mr A also had personal pensions with Standard Life, Friends Life and Legal & General. Together these were said by PWS to have a transfer value at the time of around £95,000.

On 12 June 2016 PWS recommended that Mr A transfer all his pension funds to a Self-invested Personal Pension (SIPP) with Momentum. It advised an underlying Old Mutual International Executive Redemption Bond as the vehicle for holding and investing his monies. It said the main benefits of the SIPP would be his ability to pass 100% of the fund value to his beneficiaries and increased flexibility when drawing income.

Mr A appears to have accepted PWS's recommendations.

On 28 June 2016 Mercer, Mr A's main pension scheme administrator, wrote to PWS providing a transfer value for the DB element of that scheme. This had been calculated on 25 April 2016.

On 14 July 2016 Mr A signed an application to his then OPS provider to proceed with the transfer of all his benefits into the Momentum SIPP. This incorporated various statements about what he understood to be requirements of progressing. This included a statement that if the safeguarded benefits under his scheme was over £30,000 he'd need a written statement from an authorised independent adviser confirming it had provided him with specific advice on the matter and that it was a regulated firm for this purpose.

On 16 August 2016 Mercer sent queries to PWS concerning the transfer of Mr A's OPS, stating that matters couldn't proceed until these had been addressed. This included gaining assurance that he'd received appropriate independent advice about his safeguarded pension benefits. It was a requirement of the FCA that such advice was provided by a regulated firm.

On 17 August 2017 IFS4Y says it was engaged by PWS via its portal for third parties to procure its advice on the viability of transferring defined pension benefits to non-safeguarded arrangements, for the benefit of international clients. IFS4Y was a firm regulated by the FCA with permissions to advise on the transfer of pensions.

On the same day Mr A signed forms headed with IFS4Y's branding, presumably downloaded from its portal by PWS, which were to record his attitude to risk and his reasons for considering the transfer of his DB scheme funds.

Mr A says he wasn't aware of IFS4Y. And he says he never had any contact with it at any stage throughout the advice and transfer process.

On 2 Sept 2016 Mercer confirmed for PWS the transfer value for Mr A's (DB) scheme was secured, however it referred to its communication of 16 August 2016 stating that it couldn't proceed until all the matters it had raised previously had been dealt with.

A separate company was commissioned by IFS4Y to produce a pension transfer value analysis. This was delivered to it on 5 September 2016.

On 8 September 2016 PWS wrote to Mercer enclosing a Member information form, which had been completed by Mr A two days earlier. The purpose of the form was to provide some assurance to it about the circumstances surrounding his wish to transfer from his OPS scheme.

On 13 October 2016 IFS4Y says it sent a letter to Mr A at the address it had been given by PWS. This didn't provide any recommendations, but it concluded in terms that the transfer was moderately unlikely to increase the value of his pension in retirement. But that he might feel the advantages of a personal pension were sufficient to justify the transfer.

Mr A says he never received IFS4Y's letter.

On 18 October 2016 IFS4Y provided Mercer with confirmation that Mr A had been given advice about his deferred DB rights and the transfer of his funds to an alternative pension arrangement. Appended to this letter was an Appropriate Independent Advice Statement, this was dated 13 October 2016.

I understand that Mr A's Standard Life and Legal & General pension funds worth about £ 68,000 were switched to his Momentum SIPP during August 2016. And that his OPS

benefits (both the DB and DC elements), were transferred in March 2017 with a combined value of around £588,128.

Mr A complained to IFS4Y in March 2020 about what had happened to his pension arrangements in 2016. He said he'd never received advice about his DB pension. That the report it had produced had gone to the wrong address. If he'd received the report he'd have queried the proposed transfer. And that because of moving his funds he'd suffered financial detriment. IFS4Y rejected Mr A's complaint and so he brought his case to this Service. He said:

"I was a member of a company pension scheme for a significant time. The scheme was administered by Mercer. In 2012 I left the company after 24 years of service. I got a job in the Middle East and in 2015/2016 I was approached by Prestige Wealth Services who gave me advice that the only way to ensure my family got 100% of the pension fund when I passed away I needed to move my pension to a SIPP and convinced me (I am still very naïve around pensions/finance) that I should move it."

"They did not inform me that Mercer where not keen to transfer the funds and needed proof from a UK based independent adviser that I had been given appropriate advice. They also did not tell me that the scheme that I was transferring to had much higher charges with it."

"PWS engaged IFS 4 You LTD who confirmed with Mercer that they had given me advice, advice that I never received. On the basis of IFS 4 You LTD's declaration Mercer proceeded to transfer the pension funds. The pension was a defined benefits scheme with significant funds and well managed by Mercer. The funds were transferred to an overseas SIPP with a company in Malta."

An Investigator upheld Mr A's complaint. He didn't think Mr A had received IFS4Y's report. And he didn't think it had any direct communications with him, despite what was provided for in the contract it had with PWS. Overall, he didn't think Mr A would've proceeded with the transfer of his main OPS benefits had he received its advice.

IFS4Y rejected the Investigator's findings and provided a detailed response. Amongst other matters, it's argued:

- Its contract (and therefore obligation), was to PWS not Mr A.
- It had reasonably relied on information provided to it by PWS regarding the correct postal address for Mr A.
- There was serious doubt that Mr A hadn't received its advice because the address it used was sufficiently accurate to be delivered and that he was on notice such advice would be provided because of the IFS4Y forms he'd completed, so he'd be expecting it and likely enquire if it hadn't been received.
- Any obligations arising from Section 48 of the Pension Schemes Act 2015 to ensure Mr A received appropriate advice fell to the trustees of his main OPS via Mercer.
- And because Mr A's main priority for his pensions had been the distribution of his benefits in the event of his death, he'd have gone ahead with the transfer in any event.

Because both parties couldn't agree with the Investigator's findings and conclusions, Mr A's complaint was passed to me to review afresh. This is the final stage of our process. I issued provisional decisions in March and May. I'm grateful for the detailed responses provided by IFS4Y, which I've considered carefully. I'll deal with any new material arguments it's raised in its latest submission in this 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.

Where there's conflicting information about what happened and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what's most likely to have happened.

I've not provided a detailed response to all the points raised in this case. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've taken into account all submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

IFS4Y has made arguments about the culpability of PWS and Mercer. What it says about these and any other relevant parties may or may not be accurate. But this Service can't 'join' third parties to a complaint to help shed light on what's happened. Whilst we do have powers to require parties to a complaint to provide information to us, we can't compel anyone who isn't a party to the complaint to provide evidence.

IFS4Y will be aware, a court does have powers to compel third parties to give evidence and to be cross examined. It's free to pursue other parties it feels may have been responsible to whatever degree for what's happened to Mr A and for exposing it to any part of the claims and costs that it now faces. But that's not something this Service can help with.

I'm upholding Mr A's complaint. I'll explain why.

How does the regulatory framework inform the consideration of Mr A's case?

The first thing I've considered is the extensive regulation around transactions like those performed by IFS4Y for Mr A. The FCA Handbook contains 11 Principles for businesses, which it says are fundamental obligations firms must adhere to (PRIN 1.1.2 G in the FCA Handbook). These include:

- Principle 2, which requires a firm to conduct its business with due skill, care and diligence.
- Principle 3, which requires a firm to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
- Principle 6, which requires a firm to pay due regard to the interests of its customers.
- Principle 7, which requires a firm to 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

So, the Principles are relevant and form part of the regulatory framework that existed at the relevant time. They must always be complied with by regulated firms like IFS4Y. As such, I need to have regard to them in deciding Mr A's complaint.

At the time of the advice IFS4Y gave Mr A, COBS 19.1.6 made the following specific point about advising on a transfer from OPS schemes (bolding is my emphasis):

*"When advising a retail client who is…a member of a (DB)s occupational pension scheme…with safeguarded benefits whether to transfer…**a firm should start by assuming that a transfer…will not be suitable.** A firm **should only then consider** a transfer…to be*

*suitable **if it can clearly demonstrate**, on contemporary evidence, **that the transfer…is in the client's best interests**."*

Under COBS 19.1.2, IFS4Y was required to:

- Compare the benefits likely to be paid under the ceding arrangement with the benefits afforded by the proposed arrangement.
- Ensure that the comparison included enough information for Mr A to be able to make an informed decision.
- Give Mr A a copy of the comparison, drawing his attention to the factors that do and don't support its personal recommendation, in good time, and in any case no later than when the key features document isprovided.
- Take reasonable steps to ensure that Mr A understood its comparison and its advice.

In simple terms, IFS4Y had to assess the benefits likely to be paid and options available under the OPS and compare this with those available under the new arrangements proposed before it advised Mr A on what to do.

COBS 2.1.1 R requires a firm to act honestly, fairly and professionally in accordance with the best interests of its clients, in relation to designated investment business carried on for a retail client. The definition of "designated investment business" includes "arranging (bringing about) deals in investments".

COBS 9.2.1R sets out the obligations on firms in assessing the suitability of investments. They are the same things that I look at when reaching a decision about whether the advice was suitable. In summary, the business must obtain the necessary information regarding: the consumer's knowledge and experience in the investment field relevant to the advice; their financial situation; and their investment objectives.

In its last submission IFS4Y noted what I'd said about this being an informal Service for resolving disputes between businesses and their customers. That we determine complaints by what is fair and reasonable in all the circumstances of the case. It says that by citing FCA rules to support my argument I've overstepped the legislative framework I must operate within. It says the Service has no legal power to cite FCA rules in any of its determinations. And that by doing so we open up our decisions to judicial review.

Taking action to judicially review this Service's well established approach to decision making is a matter for IFS4Y. I thought it might be helpful to set out what the FCA Handbook says about this matter (DISP 3.6.4):

In considering what is fair and reasonable in all the circumstances of the case, the Ombudsman will take into account:

(1.) relevant:
(a) law and regulations;
(b) regulators' rules, guidance and standards;
(c) codes of practice; and

(2.) (where appropriate) what he considers to have been good industry practice at the relevant time.

So, as well as considering the facts, evidence and circumstances of every case. It's clear the regulatory framework will always be something we must take into account in our decision making.

Did IFS4Y meet the regulatory obligations placed on it in its dealings with Mr A?

I don't think IFS4Y met its regulatory obligations – I'll explain why.

I start by making some observations about PWS's involvement. At the time it gave advice to Mr A it wasn't regulated in the UK. I've not seen evidence that it was aware of the requirements of the FCA regime. I say this because its approach to IFS4Y to carry out work in relation to his DB scheme was only initiated after being prompted by the scheme administrator.

Mercer was correctly insistent Mr A should receive independent regulated advice.

PWS's report with recommendations to Mr A about what he should do with his pension provisions was dated 12 June 2016. It said he should transfer all his pensions into a SIPP. He appears to have accepted the recommendations shortly afterwards. I say this because funds from his personal pension plans started to be received into his SIPP as early as 2 August 2016.

PWS's process was flawed in several respects. For example it had recommended the transfer of Mr A's DB provision before regulated advice had been delivered.

Further, based on the evidence I've seen PWS failed to gather the necessary information from Mr A about his circumstances, objectives or attitude to risk (ATR) to enable it to provide effective advice. I can't see that it properly assessed his knowledge and experience of pension and investment matters. And I can't see that it sought meaningful information from him about his retirement plans and requirements.

In its most recent submission, IFS4Y says that in setting out these matters I've accepted that it was PWS that provided Mr A with advice and recommendations in relation to the transfer of his DB benefits. And therefore that IFS4Y wasn't responsible. That is a mis-reading of my decision.

While it's clear PWS did initially provide advice to him about what he should do with his safeguarded benefits, matters couldn't proceed on that basis because it wasn't regulated to provide such advice. IFS4Y was engaged to provide him with regulated advice. And that's where it's duty of care to Mr A was initiated in relation to that transaction.

Obviously I'm not required to make any findings in respect of PWS. The reason I make these observations about what appear to be fundamental weaknesses in its approach, is because IFS4Y chose to contract with it.

IFS4Y knew, or should've known, that PWS wasn't a UK regulated company. And while businesses that wanted to use its services had to accept a limited set of terms and conditions, it's not clear what due diligence it undertook on PWS.

At a basic level, IFS4Y was reliant on information PWS had gathered. Despite obvious weaknesses in this, it's not clear it sought to clarify or augment what was available. It's not clear what it knew about how far down the advisory process PWS was with Mr A. It's not clear if IFS4Y received a copy of its financial planning report for Mr A of 12 June 2016.

Of course the business model, processes and governance arrangements put in place by a firm are matters for it to decide. Nevertheless, whether it chooses a 'light-touch' arrangement or something more comprehensive will necessarily determine the risks it then takes into its own organisation.

That's especially the case here because IFS4Y was a regulated firm with specific permissions to undertake the work commissioned by PWS. It knew, or should've known, the regulatory framework it had to work within.

IFS4Y's relationship with Mr A

IFS4Y has made several arguments which seek to place Mr A at arms-length. It says its relationship was with PWS. It refers to the following COBS provisions in the FCA handbook to make its case (square brackets indicate IFS4Y's view of the status of the parties in this complaint as related to the clause).

COBS 2.4.3 R

1. *If a firm (F)[IFY4S] is aware that a person (C1) [PWS] with or for whom it is providing services is acting as agent for another person (C2) [Mr A] in relation to those services, C1, and not C2, is the client of F in respect of that business.*

IFS4Y didn't reference the next clause:

2. *Paragraph (1) does not apply if:*
    a. *F has agreed with C1 in writing to treat C2 as its client; or*
    b. *C1 is neither a firm nor an overseas financial services institution and the main purpose of the arrangements between the parties is the avoidance of duties that F would otherwise owe to C2.*

    If this is the case, C2 is the client of F in respect of that business and C1 is not.

I'm not persuaded by IFS4Y's arguments in this regard.

Firstly, I don't think clause 1 applied because of the exceptions at clause 2 (a) and (b).

It's necessary to consider the meaning given to certain words in COBS. For example, a client is a *person* to whom a *firm* provides, intends to provide or has provided a service in the course of carrying on a *regulated activity*. And we should be mindful that PWS wasn't FCA regulated. So, no status can be assigned to it under COBS 2.4.3 R as IFS4Y has sought to do.

With these thoughts in mind, let's consider key extracts from the terms and conditions that PWS had to sign-up to with IFS4Y:

"Under UK legislation, where a member of a UK pension scheme is considering transferring certain 'Safeguarded Benefits' out of that scheme (or converting those safeguarded benefits to other benefits under the same scheme), that person is required to take 'Appropriate Independent Advice' from a UK-regulated financial adviser."

"Your client will receive overall advice on the possibility of transferring their benefits from their UK pension scheme [from IFS4Y], it is then down to you as their financial adviser to make a recommendation."

"This 'Appropriate Independent Advice' …is limited to advising your client on (i) the level of investment return required in any new pension into which your client transfers their existing benefits, in order to provide pension benefits that approximately equal those provided by the UK pension scheme, and (ii) in our opinion whether or not your client is likely, following a transfer of benefits from the UK pension scheme to a new scheme, to match or increase the level of their pension benefits in retirement compared to those that would be provided by the UK pension scheme."

"All the information within the AIA report is based on the online fact find, attitude to risk and reasons for considering the transfer documents completed by you as the client's financial adviser, which provides details of your client's circumstances, together with information obtained from the UK pension scheme. Expat IFA Ltd is not providing your client with any financial advice other than that described in (i) and (ii) above, as required by UK legislation. Expat IFA Ltd will not make a recommendation to your client about whether or not they should transfer their benefits out of the UK pension scheme.

That recommendation will be made by you as the client's financial adviser. We are unable to take responsibility if any of the information provided by you as the client's financial adviser is incorrect.

To advise your client properly we'll need you to provide information about their personal and financial circumstances… "

"Expat IFA Ltd will only contact your client for confirmation that they have requested to receive advice regarding their UK pension Scheme and to deliver a copy of the AIA report."

As the terms and conditions make clear. Mr A had to seek advice from a regulated firm before transferring from his DB scheme. IFS4Y was the regulated firm which provided that advice. It had to make contact with him at the outset to confirm he had requested the advice, and then to deliver that advice. I think Mr A was a client for the work it did – so 2.4.3 (2)(a) applies.

I note that IFS4Y has had several opportunities to confirm that it was in touch with Mr A at the outset to ask if he'd requested advice. He says he never had any contact with it. So, I must conclude it didn't. Had IFS4Y contacted Mr A, it may've started to uncover some of the serious issues I've already set out with PWS's approach and processes. And I think it's more likely than not he'd have wanted to explore matters with it in some detail, given the importance of the matters in hand.

I note that the terms and conditions PWS signed are carefully constructed. It's arguable this is because they seek to avoid duties IFS4Y had to Mr A, in the way envisaged in 2.4.3 (2b). The terms and conditions it wanted to apply to agreements with other business entities is a matter for it. But it can't use these as a device to abdicate responsibilities it had under FCA regulation, as an authorised firm with permissions to provide regulated advice about pension transfers.

IFS4Y are the regulated business in the transaction with Mr A. PWS was not. IFS4Y had permissions to advise on pension transfers. PWS did not. Referring to the principles which governed this work – IFS4Y had to provide its service with skill, care and diligence. It had to act in Mr A's best interests. It had to communicate in a way that was clear, fair and not misleading. As I will go on to demonstrate – it didn't do these things.

The requirements placed on the DB scheme trustees to ensure proper advice was received

IFS4Y have said that any obligations arising from Section 48 of the Pension Schemes Act 2015 to ensure Mr A received appropriate advice fell to the trustees of his main pension scheme via the administrator Mercer. The following clauses (Regulations 2015) are relevant:

3. *For the purposes of the definition of "appropriate independent advice" in section 48(8) of the Act, the advice must be specific to the type of relevant transaction proposed by the member or survivor.*
4. *For the purposes of the definition of "authorised independent adviser" in section 48(8) of the Act, the specified regulated activity is the activity described in article*

53E of the Regulated Activities Order(d) (advising on conversion or transfer of pension benefits).

7. *Confirmation from the member or survivor that appropriate independent advice has been received must be in the form of a statement in writing from the authorised independent adviser providing the advice confirming— (a) that advice has been provided which is specific to the type of transaction proposed by the member or survivor; (b) that the adviser has permission under Part 4A of the Financial Services and Markets Act 2000(c), or resulting from any other provision of that Act, to carry on the regulated activity in article 53E of the Regulated Activities Order; (c) the firm reference number of the company or business in which the adviser works for the purposes of authorisation from the FCA to carry on the regulated activity in article 53E of the Regulated Activities Order; and (d) the member's or survivor's name, and the name of the scheme in which the member or survivor has subsisting rights in respect of safeguarded benefits to which the advice given applies.*

11. *When the trustees or managers have received the confirmation that appropriate independent advice has been received, they must check that the company or business providing that advice has permission to carry on the regulated activity under article 53E of the Regulated Activities Order by checking the Financial Services Register maintained by the FCA…*

As established, IFS4Y completed an Appropriate Independent Advice Statement on 13 October 2016, the same day it issued its advice letter to Mr A. It then sent this along with a covering statement to the trustees of his DB scheme on 18 October 2016. In doing so it led Mercer to believe it had fulfilled its obligations in providing proper regulated advice to him.

Like the Investigator, from the evidence available I can't see that Mercer failed in its regulatory duties in relation to Section 48 of the Pensions Act. It seems to me it refused to allow the transfer of Mr A's DB funds until certain conditions had been met, including the provision to him of independent, regulated and qualified advice. IFS4Y informed them the requirements set out in regulation had been met. Without IFS4Y's confirmation this was so, the transaction wouldn't have proceeded.

Did Mr A receive IFS4Y's advice report?

IFS4Y's response to my first provisional decision considered in some detail the question of whether Mr A had received its suitability report.

Mr A has said that he never had any contact with IFS4Y. And its case file appears to indicate it never spoke to him.

Mr A also says he never received the advice letter from it dated 13 October 2016. He's told this Service had he done so he'd have investigated further and would've taken a different course of action.

We know the transfer of Mr A's DB pension went ahead. So, there are two possibilities here – either Mr A didn't receive the suitability report and proceeded with the transfer based on whatever PWS was advising him; or he has mis-remembered, he did receive the report and proceeded with the transfer and now regrets his decision.

I can see the address on the suitability letter IFS4Y produced for Mr A dated 13 October 2016 was:

[A redacted for data protection purposes]

Mr A said the address IFS4Y used wasn't one he recognised. He sent a copy of a utility bill which showed his address as:

[B redacted for data protection purposes]

Mr A has shared an instruction form filled out for a discretionary portfolio service run by Quilter Cheviot. The form appears to have been completed by PWS but was signed by him on 6 September 2016. It recorded his address as:

[C redacted for data protection purposes]

And Mr A has said his correct physical address for his residence in Dubai was:

[D redacted for data protection purposes]

It's clearly odd to see so many different versions of Mr A's address. I'd simply observe that the address IFS4Y used was most at odds with the others.

IFS4Y said it sent the suitability report to the address it had been provided by PWS. And presumably it had taken the details from Mr A. It went on to say:

"The address is not for a totally different building. In that regard, we would re-emphasise that [Mr A] initially recognised this address as his 'old flat' and only asserted that it was not his residence in his formal complaint. It seems to us, therefore, that it is safe to assume that at the very least, the report [IFS4Y] sent to [Mr A] reached the building in which his flat was situated. We cannot speculate on what happened next, but we understand that this building operated a 24-hour concierge service who, presumably, would have either recognised [Mr A's] name on the letter and taken it to his flat or taken some steps to enquire with the residents if this letter was meant for them. Either way, such problems cannot be fairly attributed to [IFS4Y] when it has used the address it was given in good faith."

IFS4Y responded to my first provisional decision by saying I had concluded as a matter of fact that Mr A hadn't received its advice. That's not quite right.

I acknowledged IFS4Y's position wasn't without merit. I note the terms and conditions it agreed with PWS said it would make contact with him to deliver a copy of the suitability report. And having looked at the address of the letter it prepared and the address for Mr A's apartment, I agree that there were similarities. I can also see it used the address recorded by PWS on its fact-find.

But there is also a significant possibility Mr A didn't receive IFS4Y's letter because:

- There were variations between the address IFS4Y says it sent the suitability letter to and the address he's confirmed.
- Mr A says PWS knew his address for correspondence was his office. This is the route it had used. He says it was normal for people in Dubai to have post delivered to their place of work. I've checked and there is evidence of this as established practice in the Emirate.
- There's an argument that given IFS4Y's client base, it should've been aware of varying postal arrangements in different jurisdictions.

In its latest submission IFS4Y says that I was suggesting it should've sent sensitive client information to a business address because it was customary. In its view it thought that would be a breach of GDPR regulations. It says it's written to the Information Commissioner's Office (ICO) to seek clarification. It's asked me to delay my final determination until it's had a

response. I've thought carefully about what it's said, but I don't see any reason to delay my decision.

The point I've been making is that IFS4Y should've researched the postal arrangements in Dubai. And it should've adjusted its approach to communicating with Mr A accordingly, doing so within the applicable rules and regulations. There were several alternatives that could've been explored with him by phone to make suitable arrangements for his receipt of its report including using his UK address or email. It hasn't met its obligation of a duty of care to Mr A in this matter.

I note the nature of the Service IFS4Y thought it was providing and its focus on the contract it had with PWS and keeping Mr A at arms-length. For example following him raising concerns with it about what had happened in 2016, IFS4Y outlined the process that was followed (bolding is my emphasis):

*"**I have spoken to [the IFS4Y adviser who conducted the pension transfer advice] and he has no record of speaking to you**, on occasion some individuals would contact [him] if they had a question about the analysis letter provided but this was not a common occurrence as most questions were answered by their adviser…It may help if I outline the process which took place:"*

*"**Expat IFA provided a service to your adviser at Prestige Wealth Solutions** to review, analyse and advise on the viability of transferring your pension from your existing scheme. In order to do this Expat IFA were provided with your personal information, reason for transfer, risk appetite and pension data that had been collated by your adviser.*

*"Once the transfer analysis was completed **the letter was then sent to you and your adviser at Prestige Wealth Solutions for him to go through with you** and allow you to make an informed decision as to whether to proceed with the transfer and sign the application or maintain your membership to the existing scheme*."

I can't be certain if Mr A received IFS4Y's advice letter or not. But given the information available to me I've concluded it's more likely than not he didn't.

There is then the supplementary consideration about why that was the case. Was Mr A culpable for not relaying his correct address to PWS. Or was PWS responsible for recording things incorrectly? The fact-find produced by it and relied on by IFS4Y is basic and unsigned.

Ultimately, I find the matter of Mr A's address details in the circumstances of the case somewhat less significant than IFS4Y's relevant failings. It had an obligation to treat its customers fairly (that means Mr A and not PWS) and use due care, skill and diligence. It failed to do these things.

IFS4Y's own terms and conditions said:

*"Expat IFA Ltd **will only contact your client for confirmation that they have requested to receive advice regarding their UK pension Scheme** and to deliver a copy of the AIA report."*

Leaving aside the inadequacies of these terms given its regulatory obligations to Mr A, I've not seen evidence that it even fulfilled its own requirements.

I note IFS4Y contacted PWS several times in May 2020 to seek information about how it had relayed the advice it had prepared to Mr A. For example, early that month it asked PWS the following (bolding is my emphasis):

*"Please confirm the date that **the suitability letter we provided via our online portal was presented and discussed with the client**."*

PWS failed to respond satisfactorily. So IFS4Y pressed it again:

"We have a record of PWS agreeing to the Expat IFA terms and conditions for the online portal, commissioning and paying for the service used to contract Expat IFA to conduct research into the suitability of a UK defined benefit pension transfer for [Mr A]."

*"By agreeing to the terms and conditions of the online portal, PWS contracted Expat IFA to research and provide advice in respect of [Mr A's] Pension. **The terms and conditions of use of the portal Include, confirmation of the date that the PWS representative gave to, and discussed with, [Mr A] suitability letter provided by ExpatIFA**."*

PWS didn't respond and so IFS4Y wrote again saying:

*I repeat the question, please could you check the records and provide the date the letter was passed to, and discussed with, [Mr A]. **Without an adequate response, might I only be able to draw a conclusion that the letter was not discussed with [Mr A] by the PWS adviser**, prior to PWS advising him to transfer his DB Pension Scheme.*

No response was forthcoming.

Wanting to check to make sure PWS had fulfilled its obligations under the terms and conditions it had with it was a reasonable thing for IFS4Y to have done. Unfortunately its efforts came rather late in the day. Why weren't these checks built into its compliance regime so that they could bite at the relevant time – prior to the transfer of Mr A's DB pension? This was a failing.

By its own admission, IFS4Y considered its contractual responsibility was to PWS – that was its focus. It placed Mr A at arms-length. It never spoke to Mr A. Relying on sending a copy of its suitability letter via PWS wasn't enough. It had a regulatory obligation to take reasonable steps to ensure that Mr A understood its pension transfer analysis and advice. Given the importance of the matters at hand, it hasn't satisfied me that it did this.

IFS4Y did have contact with the trustees of Mr A's OPS. It assured them that their member had received advice. The only reasons Mr A's former provider agreed to the transfer was because of the assurance IFS4Y had given it. So the onus was on it to know that Mr A had received such advice. And its failed to demonstrate how it secured such.

IFS4Y says Mr A would've been on notice that he'd be receiving its advice letter of 13 October 2016. This was because he'd signed forms (related to his risk appetite and reasons for transferring), that were on IFS4Y headed paper.

IFS4Y says Mr A also completed an application in July 2016 to proceed with the transfer of his safeguarded benefits, which he signed to say he'd received advice from a regulated adviser. It says, as these were completed before he'd even received such advice, this caused a delay to proceedings so that PWS could source appropriate advice.

Further, IFS4Y notes Mr A signed a Member Information Form on 6 September 2016 for his Mercer pension provider. This was to acknowledge he'd read and understood the Pension Regulator's 'scam-proof your savings', which included guidance about checking which advisors were regulated by the Financial Conduct Authority (FCA).

IFS4Y says Mr A was a highly educated man with extensive business experience. It says he initiated contact with an adviser and appears to have had access to a cash equivalent

transfer value (CETV) for his DB scheme prior to PWS's involvement. It questioned his description of himself as being financially naïve. It says he would've understood the forms he signed and appreciated the different roles being carried out by PWS and itself. It says it finds it difficult to believe he didn't understand the benefits he was giving up.

I've thought about these arguments, and I don't find them persuasive. By its own design, IFS4Y had no contact with Mr A. It seems most likely the forms he signed were downloaded by PWS on the day it contacted IFS4Y for the first time. And Mr A says he was given forms by PWS, some of which he signed without completing as these were to be dealt with later.

It seems PWS had already persuaded Mr A to transfer all his pension provision before IFS4Y's involvement. Indeed he signed to say he'd received regulated advice in July 2016 when we know he hadn't.

On this specific matter, IFS4Y's has said in its most recent submission that it believes he did so because he was deliberately trying to circumvent having to obtain UK regulated advice. My own view based on all the evidence available to me is that it more likely than not exhibits his lack of awareness of what was required by the regulator in terms of the pension advice he was receiving.

When IFS4Y did become involved I'm not satisfied the branding or the content of the forms Mr A completed would've alerted him to the significance of the work it would be undertaking. And although he signed a Mercer form to indicate he'd read a leaflet about firms which were FCA regulated, this isn't enough to make me think the onus was on him to chase a suitability letter he says he never received.

I've not seen anything that makes me think Mr A was experienced or knowledgeable of pension matters or the regulations surrounding them. I remain of the view that he more likely than not wasn't aware of the extent of regulatory obligations placed on IFYS4 or how these should've practically manifested in how it interacted with him.

IFS4Y says this Service hasn't completed a full discovery of the evidence necessary to arrive at a fair decision. It said because of the delay between the initiation of the transfer of Mr A's DB pension and when it took place, a new cash equivalent transfer value (CETV) would've been required. This meant he'd have needed to complete another set of transfer documents, which would've made clear again to him that he should've had advice from it about the transfer.

I disagree with IFS4Y. I note that in its own suitability letter to Mr A dated 13 October 2013 it said:

"…The CETV has now expired. However, the existing scheme administrators have confirmed in writing that the CETV value is 'secured/held'.

And the CETV value it advised Mr A in its suitability report of £291,042.29 is consistent with the relevant amounts quoted in a letter from Mercer to Momentum dated 14 March 2017 showing the amounts actually transferred.

Even if there had been another set of papers for Mr A to sign, given how far down the road he'd have been at that stage, it's not persuaded me this should've made a difference to the outcome, given the matters I've already set out.

In its last submission IFS4Y says it believes Mr A did receive its advice. And that the onus had been on him to have sought it out had he not received it. I've set out my findings on these matters, but leaving these aside for the moment, I think it's helpful to consider the

substance of the advice it produced for PWS and Mr A. Having done so - and even if I accepted Mr A more likely than not received its suitability report, which I don't - I've concluded this doesn't provide IFS4Y with a defensible position. I'll explain why.

The advice produced by IFS4Y for Mr A

It seems reasonable to assume that PWS received the suitability letter for Mr A's pension transfer via IFS4Y's portal. It should've had a telling influence on how it proceeded. But I think it's more likely than not it failed to effectively explain the contents to him.

Mr A told us that if he'd received the advice letter from IFS4Y of 13 October 2016, then he wouldn't have proceeded. I can understand why Mr A might say this now. But I'm not sure it's that clear cut.

Given PWS's position in the events of 2016, the way it held the ring between Mr A and IFS4Y, and the latter's effective absence in the overall process from Mr A's perspective, there's an argument that had he received the suitability letter he'd still have proceeded with the transfer of his DB benefits.

While I think he'd have discussed any suitability letter with PWS, I can't be certain what the outcome would've been. I say this because:

- He was already someway down the road in transferring his pensions before IFS4Y was engaged. He had no contact with the latter. The advice would've seemed to have confirmed the transaction would deliver his main objectives.
- As I'll establish, the advice was lacking in many areas and didn't provide a recommendation.
- I can't be confident PWS would've been motivated or sufficiently capable of impartially explaining the findings or identifying and pointing out the problems with the advice.

I've also listened to the introductory call Mr A had with our Investigator. On reviewing the advice letter after receiving a copy since raising his concerns, he noted this wasn't negative in terms of moving ahead with the transfer. And that the main driver for moving his pension was because he wanted to ensure in the event of his death the benefits would pass to his beneficiaries.

IFS4Y has argued that Mr A did receive its report, and so presumably that he proceeded to transfer his DB pension in light of such. It's also argued that whatever he did or didn't receive, he'd have gone ahead with the transfer anyway. It cited his objective around death benefits, and in its latest submission that he'd have received advantageous tax treatment on his pension funds given he planned to stay offshore for the foreseeable future.

I've concluded it's more likely than not if Mr A had received the suitability letter from IFS4Y in October 2016, he'd still have proceeded with the transfer. I say this because it was a poor report which didn't do what it was required to.

Given all these considerations, it's important to examine the adequacy of IFS4Y's advice to Mr A, under the regulations it was bound by.

The regulatory position sets a high bar, which IFS4Y had to be able to *clearly* demonstrate was met, on contemporaneous evidence, that the transfer was in Mr A's best interests. I'm not satisfied it's managed to do this in the circumstances of this case.

I've already set out the information gathered by PWS about his circumstances and objectives. These were supplemented by information captured in the two forms about his risk appetite and his reasons for considering the transfer of his DB benefits.

I'm surprised that IFS4Y considered the information it had been provided was sufficient to proceed. It was lacking in many respects. But I can't see it followed up with PWS to seek more information, for example about his financial position or his retirement requirements. And it didn't contact Mr A.

Mr A's top reasons for considering the transfer from his DB scheme were said to be (in order of priority):

- *The distribution of his residual pension benefits in the event of his death.*
- *That income from his pension was paid out in the most tax-efficient manner.*
- *The option of a flexible income in retirement.*
- *Flexibility to take his pension benefits as and when he wanted to.*
- *The ability to have some input with the direction of his retirement fund.*

Mr A's objectives as recorded are not compelling. They are not specific, measurable or time-related. Mr A was nearly 50 at the time of the advice, there's no information about his target date for retirement. Nor is there information about his pension income requirements. There's no rationale about why this was the right time for Mr A to transfer his benefits, rather than say in 5 or 10 years.

There's a significant focus on Mr A being able to pass benefits to his family in the event of his death. He's confirmed this was the biggest driver in his mind. While it's a natural and strong desire to make good provision for your family, there's no indication he was in ill-health.

As IFS4Y knew, Mr A had a reasonable expectation of living until he was 85 and his wife until she was 89. And there was a significant possibility one or both would survive beyond this. By moving his funds away from a scheme which provided protections and guarantees for life, to one where his benefits would be dependent on market performance, there was a risk his provision would be exhausted during his lifetime.

Focussing on the inheritance of any residual benefits after his passing is a second order consideration in normal circumstances, when weighing the merits of pension transfers from DB schemes.

I've seen no evidence of an attempt by IFS4Y to get to the bottom of these important questions. I think this would've been important to Mr A being able to take an informed view about the transfer of his OPS benefits. IFS4Y hasn't' done enough to satisfy me the process it followed was thorough, and therefore fair.

I've concluded Mr A's main stated objective provided a weak rationale for the transfer of his OPS benefits. Rather than exploring matters further, IFS4Y appears to have simply reflected what it was told via PWS. By its own design, its direct interaction with him was non-existent. And as I've set out, it seems more likely than not it had no successful communication with him whatsoever.

IFS4Y was in a good position to have analysed, tested, challenged and advised Mr A about what was in his best interest for retirement planning. It knew pension pots built up over many

years are to provide for retirement. And when benefits are transferred there need to be compelling reasons. That's not the case here based on the available evidence.

It was IFS4Y's role to discern what Mr A's wants and needs were and why. Its role wasn't simply to facilitate what it thought he wanted without any critical thinking. And it wasn't providing a basic transactional service to PWS. It had to use due care and skill. It had to do these things because it had to act in his best interests. It hasn't demonstrated that it met these obligations.

In its last submission IFS4Y made an argument around Mr A's ability to take benefits from his DB pension funds from the age of 55 if he'd transferred it. He was 49 at the time of the advice, working in Dubai and expected to remain so for the foreseeable future. IFS4Y says that had he remained resident there he could've drawn benefits tax free given the double tax treaty between the UK and UAE.

This is a reasonable argument to make, but I'm not persuaded by it for several reasons. For example, the financial planning report produced by PWS for Mr A in June 2016, while recognising the possibility of such an approach, also noted the uncertainties at that time:

"Given the time you have until you can access your pension, your current circumstances and future plans to retire in the UK, our preliminary advice would be to transfer your current scheme to a SIPP. Aside from consolidating all your schemes, our advice is largely based on the fact that you have yet to complete five full and consecutive tax years outside the UK…"

Mr A's more recent testimony appears to add weight to what PWS indicated in 2016, he says:

"After spending 24 years with [my former employer] I decided on a career change. When the opportunity to work overseas based in UAE arrived after discussions with the family, the decision was made for a three year commitment. My wife and children to remain at home to finish their education. We had two children in university and one studying for GCSE's. Never was I going to retire in UAE. I was Non-Dom, my wife was not, we knew I would return to UK following our short term plan."

"As the three years neared completion an opportunity to work in Oman on a short term assignment to change the HSE construction performance of a company was presented to me and I decided to undertake the role, and give me time to get a suitable UK position which I subsequently secured a [senior position in the UK]."

"I had a clear career and family plan. I am now nearer 56 years old and continue to work my career plan to get breadth of experience and interesting assignments. As yet I have not executed my 25% pension draw down and do not intend to for the foreseeable."

Mr A could've only benefitted from the tax arrangements in Dubai for his pension funds had he remained in the UAE continuously for five years. He never met the criteria for the tax advantages IFS4Y identifies. Further, he would've had to remain there until he'd reached 55. He returned to the UK when he was 51.

If the undoubted tax advantages offered by residence in Dubai been uppermost in Mr A's pension planning considerations, I'd have expected much more by way of financial analysis and commentary in both PWS financial report and the pension transfer advice provided by IFS4Y about this. Rather I think it was a possibility in the future, depending on the circumstances.

Mr A didn't need to take a decision about transferring his DB pension benefits in 2016 to take advantage of a potential tax benefit in the possible scenario where he'd still been resident in Dubai in 2021. It would've been prudent to wait until much nearer that time to

make such a significant decision. We know from what actually happened to him meant that he'd never have qualified for such advantages.

Turning to the financial case for this transaction – related to Mr A's other main priority, the level of his income in retirement. The critical yield is the level of return Mr A's new SIPP would need to have achieved in order for the transfer to match his OPS pension benefits at retirement (aged 65). The pension transfer report indicated that an annual return of not less than 5.5% would be required.

IFS4Y's advice was given during the period when this Service published 'discount rates' on our website for use in loss assessments where a complaint about a past pension transfer was being upheld. Whilst businesses weren't required to refer to these rates when giving advice, I consider they provide a useful indication of what growth rates would've been considered reasonably achievable when the advice was given in Mr A's case.

The critical yield required to match Mr A's OPS benefits was 5.5%. When the advice was given, the relevant discount rate was 4.6% per year for 15 years to retirement. So achieving the critical yield looked unlikely, especially given this excluded the effect of charges on his investments.

The comparable growth rates this Service used were based on a typical investment spread across shares and bonds. So, it's arguable that if Mr A had a high ATR, the investment portfolio selected in that case might've had a chance of big returns. But his appetite was assessed as moderate and defined in the following terms:

"I am a medium risk investor, I am prepared to accept a reasonable degree of stock market type exposure in the hope of longer term gains but require this to be in conjunction with a level of lower risk investment. I appreciate that in very unfavourable markets there is the possibility of significant erosion of my pension fund."

IFS4Y highlights Mr A's substantial pension, investment and property assets. It says his suggestion of being naïve in financial matters was a mis-statement. Unfortunately for it, the fact-find it has shared with this Service was 1 page in length and didn't have any information about his financial circumstances in 2016. There was a similar lack of detail in its suitability report. Under the section headed 'Your Circumstances' it recorded:

"You are 50, married and living in Dubai. Your wife…who is 49, lives in the UK. You have no financial dependents."

I would've expected to have seen some evidence in the advice process that IFS4Y had access to a detailed breakdown of his household financial circumstances. And similarly, that there'd been a discussion of his knowledge and experience, but the information on file is very limited.

There's no evidence Mr A was experienced in investment and pension matters. Having significant assets doesn't mean he was knowledgeable about these things. And while he held senior roles in large companies (outside the financial services sector), it doesn't follow that he should've been. He's told this Service his wife dealt with financial matters for their household. And I'm mindful he sought financial advice in relation to his retirement plans. This is important context when I consider what happened to him.

I also have some concerns about how his ATR was assessed. I can't see that a full assessment was conducted, all I've seen is a form where he was asked to select one of the five risk categories (low to high) on IFS4Y's form. It says the FCA conducted a review of its risk assessment process and that it hadn't raised any issues on the matter. I'd simply observe that the role of the FCA is to consider systemic matters. The role of this Service is to

consider individual complaints in the context of the specific circumstances and evidence of each case.

I'd expect to see a detailed questionnaire teasing out different aspects of Mr A's ATR outlook. This would then be used by the adviser to test and challenge his real appetite for risk. There's no indication that IFS4Y had evidence of any such exercise being conducted, nor what the outcome was. It says the lack of such documentation is irrelevant, the assessment happened. I don't think asserting such carries much weight in the circumstances of this case.

I also can't see that a proper assessment was conducted into Mr A's capacity for loss. Interestingly, an application he completed for an offshore bond in September 2016 indicates he had a low ability to bear investment losses. This is an important aspect of any risk appetite assessment.

More generally, I'm not satisfied that Mr A was properly informed that by moving away from his OPS scheme and using the funds to invest, he was moving from a situation where his former employer was bearing the risks related to the provision of his retirement income to one where he was taking on that risk.

I've various other concerns about IFS4Y's advice. For example, it needed to consider the investments Mr A's funds would be placed in, not provide generic comparators. It needed to be transparent about the effect of fees and charges. And so on.

IFS4Y didn't provide Mr A with enough information to be able to make an informed decision. It failed to give him a copy of the comparison between his existing scheme benefits and his proposed new arrangement, drawing his attention to the factors that did and didn't support its advice, in good time, and in any case no later than when the key features document is provided.

As I've already concluded, IFS4Y didn't take reasonable steps to ensure that Mr A understood its comparison and its advice.

IFS4Y seems to have been more concerned with fulfilling a contract with PWS for pension transfer expertise, within its carefully crafted terms and conditions, rather than providing effective advice about what was in Mr A's best interests concerning his valuable OPS benefits. It hasn't done enough to satisfy me that the transaction was demonstrably in his best interest. Nor that it provided him with a clear recommendation of such.

I don't believe IFS4Y's letter of October 2013 provided sufficiently clear, detailed or insightful advice. Such that if Mr A and PWS had received it, it would've provided either of those parties with what they required to make properly informed decisions.

IFS4Y says that at no point in its advice letter of 13 October 2016 does it state that the transfer was in Mr A's best interests. Or that he should transfer. This is true. But its letter was nuanced, non-committal and failed to provide a personal recommendation. It's advice to him concluded in the following terms:

"Overall I believe that a transfer is moderately unlikely to result in increasing the value of your pension benefits in retirement. This is because any new pension scheme would need to be able to consistently guarantee a return above the critical yield (including initial set up charges and ongoing costs) in order to have absolute certainty that it would make you better off, subject again to the existing scheme maintaining full solvency throughout. Even the worst case scenario of [your main pension provider] falling into default, the protection offered by the PPF provides very reasonable surety."

You may feel that when weighed against the terms of your old scheme and the transfer value currently being offered by them, that the flexible features, death benefits, tax efficiency, ability to influence the investment direction of your fund and other options of your new scheme are sufficient to justify the transfer and satisfy your needs."

"…I hope that the information and considerations I have provided will serve as good discussion points for you and your local adviser."

I think IFS4Y should've provided Mr A with an explicit recommendation not to proceed with the transfer of his DB scheme funds into a SIPP with Momentum.

This in addition to a more insightful and reasoned report, which adhered to regulatory requirements, would've meant that even if PWS had tried to continue to persuade Mr A of the merits of moving ahead with this element of the transaction, armed with appropriate advice I don't think he would've. It's rare for a layperson to go against advice, which in this case would've been regulated and so even more compelling.

IFS4Y challenged my earlier conclusion that had Mr A not proceeded with his DB transfer then the switch of his DC funds also wouldn't have gone ahead. I reflected on this matter and arrived at a different conclusion.

Mr A brought his complaint to us with concerns about the transfer of his DB pension. IFS4Y was engaged to consider that element alone. While both funds were part of his OPS, I think the treatment and oversight of both from a regulatory and advisory perspective was very different.

In particular PWS would've remained in the driving seat for the DC element of his pension provision. And we know that his other personal pensions were switched under its guidance. There's also an argument that such an approach would've delivered a more balanced overall exposure to risk for Mr A.

I think it's more likely than not, Mr A would've switched his DC pension funds, irrespective of IFS4Y's advice about his DB scheme. I think it's impact on decision making around the former was secondary because the explicit recommendation it should've delivered for him not to proceed was inextricably linked to the particular protections, guarantees and benefits of his final salary scheme.

To conclude I don't think the transfer of Mr A's DB OPS pension funds could sensibly be regarded as fair to him. IFS4Y failed to meet the regulatory requirements when providing him with advice and making the arrangements. So, taking all the circumstances of the case into account, it's reasonable to uphold this complaint against IFS4Y and for it to put things right.

Putting things right

I'm upholding Mr A's case. So, he needs to be returned to the position he would've been in now - or as close to that as reasonably possible – had it not been for the failures which I hold Independent Financial Services 4 You Ltd responsible for.

Where I uphold a complaint, I can award fair compensation to be paid by a financial business of up to £160,000, plus any interest and/or costs/ interest on costs that I think are appropriate. If I think that fair compensation is more than £160,000, I may recommend that the business pays the balance.

Decision and award: I uphold the complaint. I think that fair compensation should be calculated as set out below. My decision is Independent Financial Services 4 You Ltd should pay Mr A the amount produced by that calculation – up to a maximum of £160,000.

Recommendation: If the amount produced by the calculation of fair compensation is more than £160,000, I recommend that Independent Financial Services 4 You Ltd pays Mr A the balance.

This recommendation is not part of my determination or award. Independent Financial Services 4 You Ltd doesn't have to do what I recommend. It's unlikely that Mr A can accept my decision and go to court to ask for the balance. He may want to get independent legal advice before deciding whether to accept this decision.

I consider Mr A would've remained in his DB pension, but for IFS4Y's unsuitable advice and arrangements. It should therefore undertake a redress calculation in line with the pension review methodology, as updated by the Financial Conduct Authority in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers.

This calculation should be carried out as at the date of my final decision, and using the most recent financial assumptions at the date of that decision. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr A's acceptance of the decision.

Mr A and/or his current financial adviser, as appropriate, will need to co-operate with IFS4Y in relation to the supply of any necessary information required to make these calculations. It wouldn't be reasonable for delays on his part to cause a financial penalty in interest for IFS4Y.

IFS4Y may wish to contact the Department for Work and Pensions (DWP) to obtain Mr A's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P). These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the DB scheme on Mr A's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation amount should if possible be paid into Mr A's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr A as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. 25% of the loss would be tax-free and 75% would have been taxed according to his likely income tax rate in retirement.

Further information

Some examples of how calculations should be carried out are available on our website under 'Publications' / 'Online Technical Resource' / 'Investment' / 'Calculating compensation in investment complaints'.

Provision for an award of interest

The compensation amount must where possible be paid to Mr A within 90 days of the date Independent Financial Services 4 You Ltd receives notification of his acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8% per

year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes IFS4Y to pay Mr A.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above – and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won't apply.

Distress and inconvenience

In addition, IFS4Y should pay Mr A £350 for its role in the transfer of his DB pension into a SIPP, which has caused him trouble and upset.

My final decision

For the reasons I've already set out, I'm upholding Mr A's complaint. And I require Independent Financial Services 4 You Ltd to put things right in the way I've outlined.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 15 July 2022.
Kevin Williamson
Ombudsman