DRN-3624252

The complaint

Mr H complains about the advice Inspirational Financial Management Ltd (IFM) gave to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

On 25 January 2023 I issued a provisional decision and invited IFM and Mr H to comment on it. For ease of reference I've copied the relevant extracts from that provisional decision below.

"***What happened***

In March 2016, Mr H'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 H's employer would be set up – the BSPS2.

In August 2017 Mr H approached a firm of financial advisers (Firm F). It didn't have the relevant regulator's permission to advise on DB transfers and referred Mr H to IFM.

IFM met with Mr H and gathered information about his entitlement under his current DB scheme and obtained a transfer value analysis (TVAS) report. It completed a fact-find with him and an assessment of his risk appetite. Amongst other things, it noted that:

- *Mr H was aged 49, divorced with two children and living with his partner.*
- *He was employed with a yearly salary of around £36,000, with a net monthly income of £2,000 and expenditure of £1,750.*
- *He wished to retire at age 55.*
- *He anticipated he would need an income of £1,250 a month in retirement.*
- *He wanted to use the tax-free cash ('TFC') lump sum from his pension to repay his mortgage which he estimated would have around £40,000 owing at retirement.*
- *He was a member of his employer's new money purchase pension scheme to which both he and his employer contributed 6% of his salary.*

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[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.

- *He had a 'moderate' attitude to risk.*
- *The cash equivalent transfer value ('CETV') from his BSPS fund was £413,453 which would pay him an estimated yearly pension at age 65 of £23,056.*
- *The growth rate required (the critical yield) to match that income from investment in a personal pension was 6.4%.*

On 10 September 2017 IFM sent Mr H its suitability report setting out its recommendations and the reasons for those. It recommended that Mr H transfer his BSPS benefits to a named personal pension. Amongst other things IFM:

- *Summarised Mr H's objectives as wanting to transfer his DB scheme benefits to a personal pension to provide greater flexibility.*
- *Said that if he were to retire at 55 his BSPS pension would be reduced by around 30%. So it said that at "today's value" that would equate to a full pension of £16,888 a year or TFC of £55,800 and a yearly pension of £8,350.*
- *Remarked that early retirement was "unlikely to be an option" under the PPF.*
- *It said the early retirement options from the BSPS2 weren't known but would undoubtedly be inferior to those from the BSPS.*
- *Set out some of the advantages and disadvantages of a DB pension against a personal pension.*
- *Said that as Mr H didn't intend to take an annuity on retirement then the results from its TVAS were "largely academic". But it added that its analysis to date showed that investment returns of around 8% were required to match the benefits available from the BSPS. And that achieving those returns was "probably an unrealistic expectation".*
- *By assuming an investment return rate of 5% a year from a personal pension and taking income from it at 55, it could sustain him well into his old age.*
- *Said Mr H placed a higher value on flexibility and control of his pension than a guaranteed income*
- *Noted that Mr H was "very uncomfortable" about the DB scheme's future prospects.*
- *Said that Firm F would provide ongoing financial advice.*
- *Would charge Mr H a fee of £5,000 for its advice and arranging the transfer.*

The suitability report gave the following three reasons for Mr H to transfer out of the DB scheme:

- *He required flexibility and control to take an income which suited his circumstances as opposed to a guaranteed income.*
- *He didn't want to take the risk of having "restrictions in place "if the scheme entered the PPF or moved to the BSPS2.*
- *He was prepared to take more risk in return for greater flexibility.*

Mr H signed an instruction to go ahead with the DB transfer on 17 September 2017. In December 2017 the BSPS administrators paid a revalued CETV of £426,935 into Mr H's newly set up personal pension.

In 2021, after receiving a letter from the FCA telling him that he may have been misadvised, Mr H complained to IFM. IFM replied that it thought its advice was suitable for Mr H.

Mr H brought his complaint to us. One of our investigators upheld it. In short he said he didn't think that IFM's advice was suitable for Mr H. The investigator said that IFM should have advised Mr H to allow his DB benefits to go into the PPF. The investigator recommended that IFM compensate Mr H for his losses as well as paying him £300 for the distress and inconvenience he experienced.

Mr H immediately replied. He said that he felt that he would have opted for the BSPS2 rather than the PPF. Our investigator said he felt that, given Mr H's preference for early retirement then the PPF was more suitable for him.

After asking for more time to respond IFM said that it would accept our investigator's decision. Around two months later Mr H contacted us. He said he hadn't heard from IFM. Our investigator referred the complaint for an ombudsman's decision. IFM then contacted us. It confirmed that it had previously instructed an actuarial firm which had calculated that Mr H had not suffered a loss because of the pension transfer. Mr H told us that he wasn't satisfied with the situation as he didn't agree that a comparison with the PPF was suitable for him as he believed he would have chosen to go to the BSPS2.

The complaint has since been referred to me to decide.

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.

IFM accepted our investigator's assessment of the complaint and carried out a loss assessment based on a comparison of Mr H's benefits being transferred to the PPF. But, for reasons I go onto explain, I don't think that recommending a transfer to the PPF was in Mr H's best interests. So, although it seems IFM has already acknowledged the flaws in its advice process, for clarity I've provided an analysis of the key reasons for my decision below.

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the regulator's Principles for Business ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The applicable rules, regulations and requirements

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of IFM's actions here.

PRIN 6: A firm must pay due regard to the interests of its customers and treat them fairly.

PRIN 7: A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

COBS 2.1.1R: A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability. And the provisions in COBS 19 which specifically relate to a DB pension transfer.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for broadly the same reasons as those given by the investigator.

The regulator, the FCA, states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, IFM should have only considered a transfer if it could clearly demonstrate that it was in Mr H's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests and that IFM should have instead recommended that Mr H opt into the BSPS2.

Distrust and uncertainty

I'm aware that many BSPS members like Mr H had serious concerns about the security of their pension pots. The situation was evolving after the BSPS closed in March 2017. There was also some widespread trepidation about what moving pensions to the PPF meant for members. It's also well known that this was a period of uncertainty for people like Mr H. But this only serves to emphasise the need at that time for a balanced assessment of the options available and ultimately the need for suitable advice.

I understand that there will be instances where a client seeks financial advice with preconceived notions or concerns about the financial health of an employer or pension scheme. And Mr H might well have been leaning towards transferring when he sought advice. But IFM was tasked with rationally addressing Mr H's concerns and providing an appropriately balanced view of all the available options. And in order to recommend that Mr H should transfer out of his DB scheme IFM needed to be able to clearly demonstrate that doing so was in his best interests.

When Mr H approached IFM there was still the possibility that his pension could move to the PPF. And the BSPS2 had still not been confirmed. But, some months earlier, in May 2017, the PPF announced that the terms of the RAA had been agreed. Under the announced plans, Mr H's employer agreed to set up and sponsor the BSPS2, subject to certain conditions relating to funding and size being satisfied. The Pensions Regulator approved the RAA on 11 August 2017.

Subsequently, on 28 August 2017 – around two weeks before IFM produced its suitability report – the BSPS administrators provided scheme members, including Mr H, with an important update in respect of BSPS transfer values. The update said an expected payment into the BSPS of £550 million by Mr H's employer, as part of its agreement with The Pension Regulator, was likely to result in an improvement to transfer values. And for those with unexpired transfer values, like Mr H, administrators would issue updated valuations in October 2017, which would be guaranteed until at least December 2017. The confirmation that Mr H's employer had made the payment referred to was announced on 11 September 2017. And on 27 September the scheme trustees provided an update to members to announce that, in October 2017, they would be sending out options packs to give members the information they would need in order to make the right choice for them.

IFM noted in its suitability report that it was expecting the BSPS2's "full details" to be announced shortly. But, despite the development with the BSPS2, IFM didn't provide any further advice or guidance in terms of what this might mean for Mr H. And in order to ensure he had all the information he needed in order to make an informed decision before transferring, I think it should have done that.

Further, even if Mr H remained concerned about the possibility, even if it was a slim one, of the BSPS2 not happening or itself moving into the PPF at a later date, I think IFM should have addressed that concern. A move to the PPF would mean, on a general basis, a reduction of around 10% in retirement income and less generous yearly indexed pension increases. But the 10% reduction didn't necessarily mean Mr H would be worse off, as for those taking early retirement the PPF could have been more beneficial to them. But, IFM *didn't give Mr H all the information he needed in order to see if that was something that might be suitable for him.*

It's notable that the TVAS said that if Mr H's benefits were to transfer to the PPF then in order to match those the personal pension would need a critical yield of 3.2% if Mr H took a full pension at age 65. But it didn't provide any figures if Mr H chose to retire early. In fact the TVAS says Mr H had shown "no indication" he wished to retire before age 65. And, given Mr H had said that ideally he'd like to retire at age 55, that plainly wasn't the case. The TVAS said that Mr H would be entitled to a pension of £20,166 from the PPF if he retired at 65. But it didn't say what Mr H's TFC entitlement would be from the PPF at either 65 or if he decided to retire early. And given that the PPF was known to be more generous when calculating TFC figures for those retiring early, then that's something that IFM should have made him aware of. In fact IFM's suitability report says that early retirement is "unlikely to be an option" under the PPF. But that is simply wrong. So IFM didn't give Mr H a clear reference of what the PPF would have paid him if his benefits had moved into it.

Also it's likely that Mr H could have met his needs in retirement and retained guaranteed benefits if the BSPS2 hadn't gone ahead and he'd had to move his pension to the PPF. As I've said above the TVAS shows that Mr H would have a yearly pension, at age 65, of £20,166 a year. That sum is comfortably above the £15,000 a year (£1,250 a month) Mr H thought he'd need in retirement. And that income figure would be bolstered when Mr H began receiving his state pension at age 67. So, I'm not persuaded that the uncertainty that Mr H experienced when he entered into the advice process was sufficient reason to recommend that he should transfer his safeguarded benefits from a DB scheme, even with the possibility of that going into the PPF. That's because, to do so would expose those funds to the volatilities and risks of the investment markets. So, I don't think those concerns should have led to IFM recommending Mr H transfer out of the DB scheme altogether.

IFM's advice process

IFM carried out a TVAS (as the regulator required) showing how much Mr H's pension fund would need to grow by each year (the critical yield) in order to provide the same benefits as his DB scheme at age 65. But, this was based on his existing scheme benefits and Mr H didn't have the option to remain in the BSPS – he either needed to opt into the BSPS2 or move with the scheme to the PPF.

As I've said above, more information about the BSPS2 became available while IFM was going through the advice process. It wouldn't have been aware of the precise details from the BSPS2 at the time it drafted its suitability report. But, it should have known that the BSPS2 would very likely go ahead. And, in order to give Mr H enough information to make a fully informed decision about what was in his best interests, I think IFM should have told Mr H to defer making a decision on the transfer until further details of the BSPS2 were known. And that would have given IFM the opportunity to provide an analysis of the comparison between the BSPS2 benefits, the PPF and the named personal pension. But IFM didn't provide any advice or guidance about what the likely benefits from the BSPS2 were. In fact IFM recognised in its suitability report that a comparison of benefits against the current BSPS scheme didn't present a "true picture" and "arguably" didn't "add value" to the process. But it went ahead with its advice process whilst recognising that it was flawed.

The BSPS2 was thought to be of greater benefit than the funds going into the PPF for the scheme's normal retirement age of 65. So, in reality, the growth rates required to match the BSPS2 benefits were likely to be somewhere between those required for the PPF and those for the BSPS. And IFM should have updated its advice to include, in one place, a comparison of the relevant benefits of moving to the PPF, moving to the BSPS2 or *transferring to the named personal pension. Had it done so Mr H would have been in a better place to make an informed decision.*

I understand that all of the information IFM needed about the BSPS2 wasn't available when it drafted its suitability report and wouldn't become available until the following month. I also appreciate that Mr H's CETV was only guaranteed initially for three months and as such was due to lapse on 21 October 2017, but the BSPS administrators had said they would issue revalued CETVs guaranteed until December. So IFM had no urgent need to issue its suitability report when it did.

Further, transferring out of a DB scheme is a one-off event. Once transferred there's no going back, so the benefits of the DB scheme are usually lost forever. So, regardless that IFM might have felt that its advice process was at an end, it should have ensured that Mr H had sight of all the information he needed in order to make an informed choice before making that decision. And that included the information about the likely benefits of the BSPS2, even though this information didn't become available until after it had drafted its suitability report. But IFM didn't do that.

Also, there are other flaws in IFM's evidence gathering and advice process. For example, Mr H and his employer, together, were contributing to Mr H's money purchase pension scheme a sum of around £4,320 a year. So, without allowing for any investment growth or increased contributions to reflect increasing wages, that pension could have a fund of around £26,000 by the time Mr H turned 55 or £65,000 by the time he reached 65. But IFM didn't provide any analysis of whether those funds could have supported Mr H in early retirement while taking his guaranteed income from the DB scheme. So I don't think IFM presented all the information Mr H needed in order to make a fully informed decision.

Also there's very little analysis within IFM's suitability report which shows how Mr H could meet his income needs. IFM did include a graph within its report showing Mr H taking income from a personal pension by draw down. But that model shows Mr H taking the same sum as he could take from his DB scheme. So that is with him taking an income of around £8,000 a year – using prices at the time of the advice – and not the £15,000 a year Mr H thought he would need to live off. So it wasn't helpful in ensuring Mr H had a full understanding of IFM's proposals.

There is a cashflow model elsewhere on the file, which shows that Mr H could take an income of £15,000 a year from age 55, which he would need to reduce once his state pension became payable at age 67. And while it's possible that IFM discussed this model with him when it met with him, there's no reference to it whatsoever within IFM's suitability report. So it's not clear whether Mr H had ever had sight of it. And given that allowing Mr H to retire early was the key reason for its recommendation, I think this is something it needed to make sure Mr H had sight of and should have been included within its suitability report.

Financial viability

The TVAS shows the critical yield at age 65 for Mr H taking a full pension from the BSPS was 6.4%. Although IFM said in its suitability report that Mr H would require a yearly nvestment return of 8% in order to match the DB scheme benefits. In its response to Mr H's complaint IFM said it used a higher growth rate required in order to represent a "worst case scenario" and to build in some tolerance. But whatever rate it used IFM acknowledged that achieving such a yield was unlikely to be a realistic proposition. I agree that's the case, but its comparison was against the BSPS. However, as I've said above, Mr H didn't have the option of staying in the BSPS.

The critical yield required to match the benefits provided through the PPF at age 65 was 3.2%. While IFM didn't know at that time what the BSPS2 figures would be we can assume the lower annual increases under the BSPS2 would have likely decreased the critical yield compared to the BSPS. But, I think those would have been higher than the critical yield matching the PPF benefits at age 65.

IFM gave its advice during the period when the Financial Ombudsman Service was publishing '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 on pension transfers, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor.

The closest discount rate to the time of the transfer which I'm able to refer to was published for the period before 1 October 2017, and was 4.3% a year for 15 years to retirement. And it's notable that the discount rate would drop to 3.1% when adjusted for Mr H retiring at age 55. For further comparison, the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2% a year.

I've taken these figures into account, along with the composition of assets in the discount rate, Mr H's medium attitude to risk and also the term to retirement. While those critical yields didn't reflect the benefits from BSPS2, as I've already said, it's likely that the BSPS2 benefits would have been higher than the PPF at age 65. So I think the critical yield would likely have been nearer to the BSPS than the PPF figure. And in those circumstances it's unlikely that the discount rate or the regulator's middle growth rate would have met or exceeded the critical yield required to match the benefits from the BSPS2. So it seems unlikely that investing in the named personal pension could match the benefits from the DB scheme.

Further, there would be little point in Mr H giving up the guarantees available to him through a DB scheme only to achieve, at best, similar levels of benefits outside the scheme. The critical yield to match the BSPS at age 65 was 6.4%. So it would likely have been slightly lower to match the BSPS2 benefits. But that still would almost certainly have been above the discount rate of 4.3%. It also would most likely have been above the regulator's mid-level projection of 5%, which is the level of growth Mr H could reasonably expect with his attitude to risk. So, I think Mr H was most likely to receive benefits of a lower overall value than those provided by the BSPS2 if he transferred to a personal pension and took benefits at age 65, as a result of investing in line with his attitude to risk.

In addition, if there was a sustained period of poor performance then there was a very real chance that Mr H's fund would grow at a much slower rate or could suffer losses. And while IFM did point out some of these risks to Mr H, as I've said above, I believe it should have deferred providing its advice until more was known about the BSPS2. And then it should have advised Mr H that opting into the BSPS2 (the benefits under which would be guaranteed and escalated) rather than relying on investment growth in a personal pension would have been better suited to his needs.

Also, its notable that IFM has itself identified that the critical yields were unlikely to be met by transferring. But it said in its suitability report that, as Mr H didn't wish to buy an annuity, the critical yield figure was "largely academic". In other words it's dismissed the figure as being of little use. However, I find the critical yield is a useful tool as it is a reasonable comparison of the growth required in order to replace DB benefits with something of a similar nature, that is a product that would provide a guaranteed income for life.

Also, at the time of IFM's advice, the regulator required it to consider the rate of investment growth that would have to be achieved to replicate the benefits being given up. So, it needed *to provide an analysis based on the critical yield and I do think it's a relevant consideration here. That's particularly the case as I don't think Mr H could realistically say with any certainty whether he would want to take a regular income at retirement or not. While he said he wanted to retire at age 55, over five years away, the scheme retirement age of 65 was still over 15 years away. And it's entirely possible that Mr H would want at least some guaranteed income in retirement (which he could achieve by taking benefits from the DB scheme).*

But, critical yields are not the only measure we use to compare pension benefits. And, in this case I've also looked at the regulator's projection rates. But, as I've said above, those figures don't, in my view, support a transfer away from Mr H's DB scheme as being in his best interests on financial grounds.

I note that our investigator felt that, given his wish to retire early, IFM should have advised Mr H to allow his funds to go to the PPF. But, for the reasons I expand upon below, I don't think that early retirement was in Mr H's best interests or something that Mr H was genuinely set on. And as such, whatever Mr H told IFM at the time, I don't think that moving to the PPF was the right thing for him to do. Further, once Mr H's benefits had moved to the PPF he wouldn't have had the option of transferring those benefits to another scheme at a later date if he felt that was suitable for him at that time. So I don't think that a recommendation to move to the PPF was in Mr H's best interests. And, given that a transfer to a personal pension wasn't financially viable for Mr H, I think IFM should have advised him to move his benefits to the BSPS2.

Of course, financial viability isn't the only consideration when giving transfer advice. And IFM has said that its recommendation allowed Mr H to achieve his other objectives. So I've gone on to consider whether IFM has clearly demonstrated that the advice to transfer was in Mr H's best interests. When doing so I've been mindful that IFM's role was to find out what Mr H's wants and needs were and why. Its role wasn't simply to do what Mr H wanted without appropriate analysis and challenge of his motives for doing so, in order to ensure its recommendation was in his best interests.

Flexibility, early retirement and income requirement

A key reason IFM recommended Mr H transfer was for the flexibility it offered him. Having considered the evidence, I don't think Mr H had a genuine need to access his pension funds earlier than the normal scheme retirement age.

Mr H told IFM that his preference was to retire at 55. I can fully understand his wish to retire early. In fact I think most people would say that they would like to retire early if given the chance. I also think most people would understand that having the opportunity to retire early isn't worth compromising their income security for the remainder of their retirement for. It seems to me that this is something Mr H was likely to reassess once he reached age 55. In fact Mr H will turn 55 this year and he's confirmed to us that he has no concrete plans to retire at present. And as such, I think early retirement was something that was – most likely – nice to have rather than a genuine need for Mr H.

Further, if Mr H had a genuine need for early retirement then he might have been better off by opting for a transfer to the PPF. It was well-known that the manner in which PPF calculates its early retirement factors, including TFC sums, are more generous than in many DB schemes, including the BSPS. But in this case IFM told Mr H that early retirement from the PPF wasn't an option for him, which – as I've already said – was simply wrong. And as a result IFM hasn't presented the information needed in order to see what Mr H might have been entitled to from the PPF if he retired early. And, while I don't think a move to the PPF *would have been in Mr H's best interests, in order to allow him to make a fully informed decision this was something that IFM needed to do.*

In any event I don't think Mr H had a concrete need to take early retirement. As I've said above I can understand why he would want to retire at age 55. But, for most people, early retirement means a significant drop in income. And that would dramatically reduce most individuals' spending power and lifestyle choices. So, when faced with that prospect at an early retirement age, most people choose not to retire. Instead they opt to continue working to support their current and future lifestyle options. And that seems to be a more likely prospect for Mr H. But there's no evidence that IFM seriously challenged his wish of early retirement at age 55. So I don't think it met its obligations to challenge his objectives in light of what he would be giving up.

Mr H was still over five years away from 55 and 15 from 65. So he had no need to make an urgent decision to transfer out of his DB scheme, as – if IFM had deferred completing its advice process – he could have opted to move into the BSPS2. And, if he still felt that he wanted to retire before age 65, and felt that the income from the BSPS2 wasn't enough for his needs at that time, he could have considered transferring his DB benefits to another scheme at that point. But that wasn't a decision he needed to make when he was still only 49 years old. However, it doesn't appear that IFM put that option to him.

That said, it's true to say that Mr H couldn't have had the same level of flexible access to his DB funds as he could from a personal pension. While he could have chosen to take his DB one early, if he'd wanted to take TFC, then he would have had to take that at the same time as drawing a regular income from his pension. Whereas the personal pension would allow Mr H to draw down funds as he saw fit. But while I can see why that might have been an attractive prospect to him, I'm not persuaded that Mr H had any concrete need to take TFC at all or to vary his income throughout retirement.

I'm aware that Mr H said he'd like to pay off his mortgage if he retired early. But there's no evidence he was in mortgage arrears or struggling to meet those payments. So he had no requirement to take TFC in order to pay his mortgage off early. And it's not the case that Mr H wouldn't have any flexible access to funds, as he would have been able to draw down sums from his money purchase pension. So while the option of drawing all his pension income flexibly might seem like something that would be nice to have, I can't see that Mr H had any genuine need for that flexibility that would be worth giving up guaranteed benefits for at the time that IFM gave its advice. So I don't think it was in his best interests to transfer.

Death benefits

Death benefits are an emotive subject and of course when asked most people would like their loved ones to be taken care of when they die. And I note that the suitability report says that a key objective for Mr H was allowing his family to inherit his pension on his death. So the lump sum death benefits on offer through a personal pension was likely an attractive feature to Mr H. That's because whatever was left within Mr H's personal pension at the date of his death would be passed on to his children. But whilst I appreciate death benefits are important to consumers, and Mr H might have thought it was a good idea to transfer his DB scheme to a personal pension because of this, the priority here was to advise Mr H about what was best for his retirement provisions.

A pension is primarily designed to provide income in retirement – not a lump sum to family after death. But in transferring out of his DB scheme Mr H was essentially giving up a guaranteed, index linked, increasing income in retirement, for the potential for a lump sum for his family that they may not need for many years to come. And by that time, the fund could have been depleted by Mr H's withdrawals from it.

IFM said Mr H's pension fund would last beyond his life-expectancy. So Mr H might have thought that guaranteed a significant lump sum for family on his death. But, IFM's models were based on the fund growing by 5% every year. And if the fund grew by less than IFM expected, or suffered losses, then there would be less available as a death benefit.

Further, the fund would reduce as Mr H drew down money from it. And if he drew down heavily from it in the early years of his retirement, then those deductions would reduce the lump sum benefit available in the event of his death. In fact every time Mr H took a withdrawal he would be reducing the amount available as a legacy for his family.

If Mr H genuinely wanted to leave a legacy for his family, which didn't depend on investment returns or how much of his pension fund remained on his death, then life insurance might have been a better solution for him. Mr H already had a significant death in service benefit through his employer. He also had the funds invested in his money purchase pension scheme. But if he wanted an extra sum to cover his retirement years, then he could have taken extra cover out on a whole of life basis. But there's no evidence that IFM discussed this with Mr H.

Overall, I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr H.

Summary

I don't doubt that the flexibility and potential for higher death benefits on offer through a personal pension would have sounded like attractive features to Mr H. But IFM wasn't there to just transact what Mr H might have thought he wanted. The adviser's role was to really understand what Mr H needed and recommend what was in his best interests.

IFM was in a good position to have analysed, tested, challenged and advised Mr H about what was in his best interests for retirement planning. It knows valuable pension pots like Mr H's DB scheme were paid into with the intention of providing for retirement. And ultimately, I don't think the advice IFM gave to Mr H was suitable. He was giving up a guaranteed, risk-free and increasing income within the BSPS2. By transferring to a personal pension Mr H was, in my view, likely to obtain lower retirement benefits. And I don't think there were any other particular reasons which would justify the transfer and outweigh this. So, I don't think it was in Mr H's best interests for him to transfer his DB scheme to a personal pension when he had the opportunity of opting into the BSPS2.

I appreciate that the BSPS2 hadn't been confirmed when IFM gave its advice. But it became clear to all parties that it was likely to be going ahead and IFM said itself that "full details" were expected shortly. Mr H had at least five years to his preferred retirement age and over 15 years to the scheme's normal retirement age. So his needs in retirement could have changed in the meantime. And by opting into the BSPS2 Mr H would have kept the ability to transfer out of the scheme nearer to his retirement age if he needed to. So, I think IFM should have advised Mr H to opt into the BSPS2. Also, while unmarried at the date of the advice, Mr H was living with his partner. And if he chose to re-marry in the future, under the BSPS2 his wife's pension would be set at 50% of his pension at the date of death, and this would be calculated as if no lump sum was taken at retirement (if Mr H chose to do so). The annual indexation of his pension when in payment was also more advantageous under the BSPS2. So, I think IFM should've advised Mr H to opt into the BSPS2.

Of course, I have to consider whether Mr H would have gone ahead with the transfer anyway if it wasn't for IFM's advice. And, after thinking about this carefully, I'm not persuaded he would have done so. That's because, Mr H's BSPS pension accounted for a significant *portion of his retirement provision at the time. So, if IFM had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests and that he would likely be worse off as a result of doing so, I think he would have accepted that advice. I'm also not persuaded Mr H's concerns about the future of the DB scheme was so great that he would have gone against IFM's advice. That's because IFM had the opportunity to clearly explain that the scheme trustees and his employer were not one and the same. And that the future of the pensions scheme was in the process of being taken out of the employer's hands. So IFM could have allayed Mr H's concerns about the uncertainty of the scheme. And I don't think those would have been sufficient reason for Mr H to insist on a transfer.*

It follows that I don't think IFM's advice to Mr H to transfer out of his DB scheme was suitable for him. And I think it should have advised him to opt into the BSPS2 instead. So, I think IFM should compensate Mr H for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology. And, as this matter has been a source of distress and inconvenience for Mr H, I think IFM should also pay him £300 to address that."

Neither IFM nor Mr H made any substantive comments concerning my provisional 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.

As neither IFM nor Mr H objected to my provisional decision I see no reason to change it.

Putting things right

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and set out its proposals in a consultation document – https://www.fca.org.uk/publication/consultation/cp22-15.pdf

In this consultation, the FCA said that it considers that the current redress methodology in Finalised Guidance (FG) 17/9 (Guidance for firms on how to calculate redress for unsuitable defined benefit pension transfers) remains appropriate and fundamental changes are not necessary. However, its review has identified some areas where the FCA considers it could improve or clarify the methodology to ensure it continues to provide appropriate redress.

A policy statement was published on 28 November 2022 which set out the new rules and guidance-https://www.fca.org.uk/publication/policy/ps22-13.pdf. The new rules will come into effect on 1 April 2023.

The FCA has said that it expects firms to continue to calculate and offer compensation to their customers using the existing guidance in FG 17/9 for the time being. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with the new rules and guidance.

We've previously asked Mr H whether he preferred any redress to be calculated now in line with current guidance or wait for the new guidance/rules to come into effect. He would like his complaint to be settled in line with the new guidance/rules.

I consider it's fair that IFM calculates Mr H's redress in line with the new guidance and rules when they come into effect.

A fair and reasonable outcome would be for IFM to put Mr H, as far as possible, into the position he would now be in but for its unsuitable advice. I consider Mr H would have most likely opted to move his benefits to BSPS2 if IFM had given suitable advice.

The basic objective of the amendments to the redress methodology still remains to put a consumer, as far as possible, into the position they would be in if the business had advised them to remain in the DB scheme. Having reviewed the FCA's consultation and policy statement, I'm satisfied that the changes still reflect a fair way to compensate Mr H.

IFM must undertake a redress calculation in line with the updated methodology as soon as any new rules and/or guidance come into effect (rather than to calculate and pay any due compensation now in line with FG17/9).

For clarity, while Mr H had told IFM he'd prefer to retire at age 55, he's told us he has no concrete plans to retire at present. So, compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly once any new guidance/rules come into effect.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr H'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 H as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to his/her/their likely income tax rate in retirement - presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

The compensation amount must where possible be paid to Mr H within 90 days of the date any changes to DB transfer redress guidance or new rules come into effect and IFM has received notification of Mr H's acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8% a year simple from the date any changes to DB transfer redress guidance or new rules come into effect to the date of settlement for any time, in excess of 90 days, that it takes IFM to pay Mr H.

Income tax may be payable on any interest paid. If IFM deducts income tax from the interest, it should tell Mr H how much has been taken off. IFM should give Mr H a tax deduction certificate in respect of interest if he asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Where I uphold a complaint, I can award fair compensation of up to £160,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £160,000, I may recommend that the business pays the balance.

My final decision

<u>Determination and money award</u>: I uphold this complaint and require Inspirational Financial Management Ltd to pay Mr H the compensation amount as set out in the steps above, up to a maximum of £160,000.

Where the compensation amount does not exceed £160,000, I would additionally require Inspirational Financial Management Ltd to pay Mr H any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I would only require Inspirational Financial Management Ltd to pay Mr H any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Inspirational Financial Management Ltd pays Mr H the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr H.

If Mr H accepts this decision, the money award becomes binding on Inspirational Financial Management Ltd.

My recommendation would not be binding. Further, it's unlikely that Mr H can accept my decision and go to court to ask for the balance. Mr H may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 8 March 2023.

Joe Scott
Ombudsman