DRN-3636235

The complaint

Mr T 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

In March 2016, Mr T'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 T's employer would be set up – the BSPS2.

In June 2017 the DB scheme administrators sent Mr T details about his current entitlement under the DB scheme including that the fund had a cash equivalent transfer value ('CETV') of around £110,100.

The following month, July 2017, Mr T approached a firm of financial advisers (Firm F) for advice. It didn't have the regulator's (the Financial Conduct Authority - FCA) permissions to give pension transfer advice, so it referred Mr T to IFM to give that advice. IFM gathered information about his entitlement under his current DB scheme. It also asked him to complete a fact-find questionnaire, which he did on 1 August 2017. Amongst other things, IFM noted that:

- Mr T was 30 years old.
- He lived with his partner and they had a child aged 3.
- Mr T was employed earning around £37,000 a year. His partner wasn't employed.
- They owned their own home, subject to an outstanding mortgage, which they were repaying at a cost of £350 a month. IFM hasn't recorded any further detail about the home's value or the outstanding mortgage.
- Mr T had regular outgoings of £178 for unspecified '*loans/credit cards/HP*'.
- Mr T would like to retire at 55 but expected *realistically* to retire at 65.
- He was a member of a defined contribution ('DC') scheme his employer had recently set up. He and his employer each contributed 6% of his salary towards that.

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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.

- Mr T had a balanced attitude to risk.

On 2 August 2017, IFM produced an illustration from the named personal pension provider showing what Mr T's pension could be worth at retirement by investing with it. On the same day he completed the forms to transfer his DB scheme funds to the named personal pension.

IFM has recorded that it sent Mr T its suitability report setting out its analysis and the reasons for its recommendation to transfer on 10 August 2017. On 16 August 2017 IFM wrote to Mr T to confirm it had given him regulated advice.

In February 2022 Mr T complained, via the Financial Ombudsman Service, that IFM's advice to transfer out of his DB scheme was unsuitable for him. IFM didn't initially reply to the complaint within the FCA's prescribed timescales for doing so. Mr T asked us to look into the matter in May 2022.

After we asked IFM for its file it replied to Mr T's complaint. It didn't uphold it. Amongst other things it said it couldn't locate a copy of the transfer value analysis report (TVAS) it would have obtained at the time of its advice. It asked Mr T if he had kept a copy. In justification for its advice it said that at the time Mr T wanted control and flexibility of his pension. He also wanted to secure death benefits for his family. In addition he didn't want his pension fund to go into the PPF. IFM said in those circumstances his objectives could only be achieved by transferring out of the DB scheme.

One of our Investigators looked into Mr T's complaint. He spoke with Mr T. Mr T told him that, while he had retained many documents from the time as he is someone who "*kept everything*", he didn't have a copy of the TVAS. He also said he didn't recall IFM ever having sent him a copy of the suitability report previously.

Our Investigator didn't think IFM's advice was suitable for Mr T. Amongst other things that was because the Investigator didn't think the transfer was financially viable and there was no other reason that justified a transfer. He recommended the complaint be upheld. He said IFM should establish if Mr T had suffered a loss and pay compensation, including £300 to address his distress and inconvenience.

IFM didn't agree with our Investigator's complaint assessment. Amongst other things it said that there were clearly errors in the version of the suitability report it had sent to us. It believed that this was an early version and not the same one it had sent to Mr T, which it no longer had a copy of. It added that Mr T had enough capacity for loss to justify a transfer. It also said that Mr T's partner couldn't have benefited from the spouse's pension because they weren't married.

The investigator wasn't persuaded to change his opinion, so the complaint was referred to me to make a final decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've taken into account relevant law and regulations, FCA'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 Principles for Businesses ('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 largely the same reasons given by the investigator.

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 T's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

IFM's documents and advice process

At the time IFM gave Mr T advice the FCA required it to carry out a TVAS report. But if IFM obtained such a report it no longer has a copy.

The TVAS should have set out the growth rates required (the critical yields) for an alternative pension arrangement to match the benefits from the DB scheme. And given Mr T had expressed an interest in potentially retiring early I would have expected the TVAS to have shown the critical yield at Mr T's normal retirement age and also his preferred retirement age of 55. Similarly, given that there was a clear possibility that the DB scheme would move into the PPF I would have expected the TVAS to show the relevant critical yields to match the benefits from the PPF. I would also have expected it to show Mr T's entitlement from the DB scheme, and the PPF, revalued to his likely dates of retirement.

I find it extremely difficult to say, even on the balance of probabilities, whether IFM produced a TVAS which showed all those things. In fact it's not clear that IFM obtained a TVAS at all. I've noted that there's a document on file titled '*Adviser/ Admin Business Submission Checklist*' which is clearly a prompt for IFM to make sure it had completed certain tasks before making a pension transfer. IFM's adviser has added a handwritten note to that checklist saying "*NO TVAS*", which would seem to be recognition that the TVAS was missing from the file. But it's not clear how significant that note is or when it was added. For instance it's not clear if he added it at the point he gave his advice, when he realised he should have had a TVAS but didn't. Alternatively he might have added it at a later date, for example, while he was drafting the suitability report and noted the TVAS was missing, or at some other point in time. However, what is clear is that IFM no longer has a document the FCA required it to have in order to give its advice. Mr T has confirmed that he doesn't have a copy and doesn't have any recollection of seeing it.

Similarly, I agree with IFM that the suitability report its shown to us is almost certainly a draft version rather than the completed report it intended to send to Mr T. That's because, while some elements of the report on file clearly refer to Mr T's situation at the time, there are many other points that don't. For example the CETV showed that, at the point Mr T left the DB scheme in May 2016, he had a pension entitlement of around £4,950 a year. IFM noted that if he were to take early retirement, at age 55 his pension entitlement would reduce by 30%. But the suitability report said that If Mr T were already 55 then he would have a yearly pension entitlement of around £24,610, rather than the £3,465 figure it should have been. The report has many other anomalies that don't relate to Mr T: for instance it says Mr T had ten years until he turned 65, when he was actually 35 years away from that age. Elsewhere it says that Mr T's chosen retirement date for a new pension was age 75, when there's no evidence he said that. So those points clearly do not refer to Mr T.

It seems likely that IFM used a template report that had already been part completed with circumstances and figures relating to another individual. IFM then intended to overtype the template updating it to Mr T's personal circumstances. But if it ever completed that action it didn't keep a copy. IFM said it must have completed the report, printed it and sent it to Mr T without then saving the finalised version to its file. But there's no evidence, beyond IFM's comments, that's what happened. Mr T told us he doesn't remember ever seeing the report at the time. He said the first time he saw it was when IFM responded to his complaint And given he said he's someone who keeps *everything* but doesn't have a copy of such an important document, I think it's likely that IFM didn't ever send him the fully completed version. And given that he'd already signed the forms for the transfer to go ahead, he didn't need to see the final suitability report in order for the transfer to happen. So he might not have realised he hadn't received it at the time.

However, even if IFM did send Mr T the corrected final version of the report (that he doesn't have and doesn't remember receiving), I think IFM's advice process was flawed. It's notable that Mr T completed a fact-find on 1 August 2017. The next day, 2 August, Mr T completed the forms to transfer out of his DB scheme. So, it would appear IFM spoke with him that day and recommended the transfer. That was clearly before it had given him any written analysis to support its recommendation. In fact the version of the suitability report I have seen is dated eight days later. It follows that, at the point Mr T accepted IFM's recommendation to transfer, the only relevant written information It appears he had sight of was the named personal pension illustration.

It's likely IFM would argue that it explained its analysis and reasons for its recommendation to Mr T when it met with him. And, as it believed it was in his best interests to transfer it put those wheels in motion before providing its detailed analysis to him in writing. But given that we don't know what the final content of its suitability report was, I can't be certain that its analysis and recommendations were sound. And there are other errors within the suitability report that can't be attributed to the wrong version on file being a draft only.

For example under a heading of '*Your Needs and Objectives and the Scope of My Advice*'. IFM has included the following comment:

"*you are concerned about the possibility of the scheme entering the Pension Protection Fund (PPF) and that this outcome means benefits would not be available until 65.*"

It's clear from that comment that IFM was of the belief that the PPF didn't allow early retirement. So it told Mr T he would lose the option of taking early retirement if his pension went into the PPF. That is plainly wrong. In fact the benefits from the PPF for those taking early retirement and particularly for those wanting to take a tax free cash ('TFC') lump sum, are more generous than the benefits from the BSPS (or the BSPS2). So it would appear that IFM misled Mr T on that point.

It follows that I don't think IFM communicated with Mr T in a way that was clear, fair and not misleading. Transferring out of a DB scheme is a one-off event. Once transferred there's no going back, the benefits of the DB scheme are usually lost forever. But in this instance IFM made a recommendation to transfer, and allowed Mr T to complete the forms to do so, before it had given him a detailed analysis of what he would be giving up by doing so and while providing misleading information about his possible entitlement to early retirement under the PPF. I don't think that was a fair and reasonable manner in which to approach a subject as serious as a transfer from a DB pension.

Financial viability

As I've said above the FCA required IFM to produce a TVAS showing how much Mr T's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield). That was to allow IFM and Mr T to make an informed decision about whether or not transferring to an alternative pension could match the benefits the DB scheme would offer. Without those figures it's not now possible to make that comparison with any confidence.

In response to our Investigator's assessment of the complaint IFM estimated that the relevant critical yield for someone of Mr T's age would be 5% to 6%. But as that is an estimate only it's not something I can rely on. But even if it was it indicates that Mr T would be unlikely to exceed the benefits of the DB scheme by transferring.

I'll explain that the FCA provides growth projections, which, at the time of IFM's advice had remained unchanged since 2014: the upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%. So for someone with a balanced attitude to risk like Mr T, the possibility of a growth rate of 5% was not impossible. Although, given he had almost 35 years to the scheme's normal retirement age the probability of his personal pension continually growing at that rate, without periods of loss or of poor investment performance, seem unlikely.

Further, IFM gave its advice during the period when the Financial Ombudsman was publishing 'discount rates' on our website for use in loss assessments where a complaint about a past pension transfer was being upheld. I'll explain that a discount rate is a measure of what an investment is likely to grow at in the future. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, I consider they provide a useful indication of what growth rates would have been considered reasonably achievable when the advice was given in this case. The relevant discount rate was 4.7% for 34 full years to retirement at age 65. That is slightly below the FCA's projected growth rate and further below IFM's estimated critical yield.

But, even if an alternative pension could match the required critical yield, there would be little point in Mr T giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme. So I'm not persuaded that transferring was in Mr T's best interests.

Flexibility

While IFM's suitability report on file isn't the finished product, it seems a key reason it gave for recommending a transfer was to allow Mr T to access his pension funds flexibly including the ability to retire early.

I've already said above that it would appear IFM told Mr T that if his pension were to move to the PPF then he wouldn't be able to take early retirement. I'll repeat that is wrong and in fact the provisions for early retirement from the PPF were known to be more generous than those from the BSPS. So I'm satisfied that IFM misinformed Mr T on that point.

Further, at the time, Mr T was over 24 years away from the earliest age, 55, at which he could take early retirement (more recent legislation has since increased that age to 57). And Mr T appears to have recognised that he might not wish to retire early once the time came, as he said when completing the fact-find questionnaire that "realistically" he would retire at age 65. So, it's apparent that Mr T had no concrete plans to retire early, but IFM has seemingly given him the impression that this is something that wouldn't have been possible unless he transferred. Clearly that's not the case.

IFM's also said that by transferring Mr T gained the opportunity to access his funds flexibly in retirement. And that he couldn't achieve that objective by remaining in the DB scheme. But I can't see evidence that Mr T had a need to access his DB funds flexibly throughout his retirement.

There's no evidence on file that IFM established what Mr T's income needs in retirement would be or how he would achieve those. However, given he had over 24 years to his earliest retirement date (at that time) and over 34 years to his scheme's normal retirement date, a lot could happen in that time. So it's likely that Mr T wouldn't have known what his income needs would be in retirement. But Mr T's DB funds wouldn't be his only retirement provision. He had recently joined his employer's DC pension scheme. He and his employer together were contributing 12% of his salary towards that pension. At that time that would have been around £4,440 a year. He could have anticipated continuing to contribute to that policy (or a similar one if he were to change jobs in the future) for the remainder of his working life.

So I think it's reasonable to assume that, by the time he reached 65, his personal pension should have amassed a sizeable pot. Indeed without allowing for Mr T increasing his contributions, his salary growing, or any return on the investment, by 55 he could have a pot in the DC pension of around £111,000. And that sum would increase to around £155,000 by the time he reached 65. So Mr T could have accessed those funds in a flexible manner if he felt the need to do so. That would have allowed him to leave his safeguarded DB funds untouched. So he didn't need to transfer out of the DB scheme in order to have some flexible access to funds in retirement.

It follows that I'm satisfied Mr T could have met his flexible income needs in retirement while remaining in the DB scheme. So, I don't think it was in his best interests to transfer his pension just to have flexibility that he didn't need.

That said, it's true to say that Mr T couldn't have had flexible access to his income from a DB scheme. While he could have chosen to take his benefits 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 him to draw down funds as he saw fit. But while I can see why that might have been an attractive prospect to him as I've said above, if Mr T wanted flexible access to funds then he could have accessed his DC money in that manner. So he had no need to give up the guaranteed benefits from the DB scheme in order to have flexible access to funds or to take TFC

Concerns about the PPF

I understand that Mr T was concerned about the prospect of his pension moving into the PPF. But, other than incorrectly telling Mr T that he couldn't take early retirement if his pension moved into the PPF, it's not clear how IFM addressed that concern. There was some widespread trepidation about what moving pensions to the PPF meant for scheme members. It's also well known that this was a period of uncertainty for people like Mr T. But this only serves to emphasise the need at that time for a balanced assessment of the options available and ultimately the requirement for suitable advice.

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. It's likely that Mr T's concerns of that nature were a motivating factor in seeking advice and considering transferring his pension. So he might well have been leaning towards transferring his pension when he sought advice. But IFM was tasked with rationally addressing those concerns and providing an appropriately balanced view of all the available options.

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 apply across the board, and, as I've indicated above, in some ways the PPF could actually be beneficial for scheme members. That's because the benefits for those retiring early were more generous than from the BSPS (or the BSPS2). I understand that the prospect of pension benefits moving to the PPF was for some people rather daunting, it's probably the case that it wasn't as significant as many BSPS scheme members believed it to be. And in order to recommend that Mr T should transfer out of his DB scheme, even if that were to move to the PPF, IFM needed to be able to clearly demonstrate that doing so was in his best interests. But I'm not persuaded that was the case for Mr T.
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Overall, I'm satisfied Mr T could have met his income needs in retirement through his DB scheme, even if that had moved to the PPF. In retirement his income would be supported by funds in his DC scheme and, eventually, his state pension. So, I don't think it was in Mr T's best interests for him to transfer his DB funds just to avoid those moving to the PPF.

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. The lump sum death benefits on offer through a personal pension was likely an attractive feature to Mr T. That's because whatever was left within it at the date of his death would be passed on to his nominated beneficiary. And, if that happened before his retirement or soon after, then that would likely be a significant sum.

But whilst I appreciate death benefits are important to consumers, and Mr T 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 T about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement not to provide a legacy for loved ones in the event of a premature death.

Further Mr T was still only 30 years of age. He was in good health and there was no evidence that his life would be cut shorter than could be expected. So there was no compelling reason for him to have a pressing concern about leaving a legacy for his loved ones on his death. Also, at that time, I'm aware that his employer provided death in service cover. So, if he had died prematurely while still working for that employer then his beneficiary could have expected to receive a considerable lump sum. But it doesn't appear that IFM referred to this as there's no record of it in the fact-find information.

Given the errors in the suitability report it's not clear exactly what information IFM gave to Mr T about death benefits. For example the suitability report I've seen said that if Mr T were to die immediately his spouse would be entitled to a yearly pension of £17,757 from the DB scheme or a lump sum of £867,115 if he transferred to a personal pension. But the accurate figures were a spouse's pension of around £2,750 a year from his DB scheme and a lump sum of around £110,100 from a personal pension. So I don't know what information, if any, IFM gave to Mr T about death benefits.

Further, the spouse's pension would continue to grow each year with the scheme's indexation and was guaranteed. Unlike the death benefits from the personal pension it wasn't reliant on investment performance or how much was left in the pot at the date of Mr T's death. And if Mr T lived a long life, drew heavily from the fund in the early years of his retirement, or the investments suffered losses or poor performance would mean that there wasn't a lot left to leave as a legacy to his loved ones.

IFM said that the spouse's pension from the DB scheme was of no value to Mr T as, at that time, he was unmarried and the spouse's pension was only payable to married partners. That is true of the DB scheme at that time. So I would have expected IFM to point this out to Mr T so that he could make an informed decision about what he wanted to do, although I've seen no evidence it did so. But in any event, Mr T was still only 30 and there was still time for his circumstances to change before his family was likely to benefit from death benefits. In any event, IFM should not have encouraged Mr T to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

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 T. And I don't think that insurance was properly explored as an alternative.

Control

IFM said in its response to Mr T's complaint that a transfer gave him the freedom to control his pension which outweighed any guarantees the DB scheme could have offered. But I think IFM overstated any wish Mr T had to control his pension. Mr T was not an experienced investor and I can't see that he had an interest in or the knowledge to be able to manage his pension funds on his own. Indeed I understand Mr T paid Firm F a proportion of his pension fund in order to do that for him. So, I don't think that this was a genuine objective for Mr T – it was simply a consequence of transferring away from his DB scheme.

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 T. But IFM wasn't there to just transact what Mr T might have thought he wanted. The adviser's role was to really understand what Mr T needed and recommend what was in his best interests.

Ultimately, I don't think the advice IFM gave to Mr T was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr T was very likely to obtain lower retirement benefits and in my view, there were no other particular reasons which would justify a transfer and outweigh this. Mr T shouldn't have been advised to transfer out of the DB scheme just to avoid the PPF or to have flexibility he didn't need.

Of course, I have to consider whether Mr T would've gone ahead anyway, against IFM's advice. I've considered this carefully, but I'm not persuaded that Mr T would have done so, if IFM had recommended he remain within the scheme. I say this because Mr T was an inexperienced investor with a balanced attitude to risk and at that point in time this pension accounted for the majority of his retirement provision. So, if IFM had explained that he could meet his objectives without risking his guaranteed pension, even if that were to move into the PPF I think that would have carried significant weight. And, if IFM had provided him with clear advice against transferring, explaining why it wasn't in his best interests, I think he would have accepted that advice.

So, I think IFM should've advised Mr T to remain in his DB scheme.

At the time IFM gave its advice the BSPS2 was still some way from being established and it seemed likely that Mr T's only option other than transferring would have been to allow his fund to move to the PPF. But, after it gave its advice there were further developments with the BSPS2. By October 2017, the DB scheme trustees sent its members 'time to choose' packs. Those gave members three options:

- To stay in the BSPS and move with it to the PPF.
- To opt to move their benefits to the BSPS2.
- To transfer out of the scheme and into a private arrangement.

By that time, had IFM given suitable advice, Mr T would have known that a transfer wasn't in his best interests. That would have left a choice between the PPF and BSPS2. For those planning on retiring at age 65 the BSPS2 had more generous benefits than the PPF. And by opting into the BSPS2, Mr T would have kept the option to transfer out of that scheme nearer to his retirement age if that was what he decided to do. So, had he not have already transferred out of the DB scheme, I think Mr T would have chosen to opt into the BSPS2.

Also, I'm aware that this matter has been a source of distress and inconvenience for Mr T, as he's been concerned that his security in retirement might have been compromised as a result of IFM's unsuitable advice. So, I think it should pay him £300 to address that.

Putting things right

A fair and reasonable outcome would be for the business to put Mr T, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr T would have most likely remained in the DB scheme and then opted into the BSPS2 if IFM had given suitable advice.

IFM must therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement PS22/13 and set out in the FCA's handbook in DISP App 4:
https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter.

IFM should use the FCA's BSPS-specific redress calculator to calculate the redress. If IFM does not yet have access to the calculator it should contact the supervision department of the FCA to seek access to it as soon as possible. A copy of the BSPS calculator output should be sent to Mr T and the Financial Ombudsman upon completion of the calculation together with supporting evidence of what IFM based the inputs into the calculator on.

For clarity, Mr T has not yet retired, and he has no plans to do so at present. So, compensation should be based on the scheme's normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

This calculation should be carried out using the most recent financial assumptions in line with PS22/13 and DISP App 4. In accordance with the FCA's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr T's acceptance of the decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, IFM should:

- calculate and offer Mr T redress as a cash lump sum payment,
- explain to Mr T before starting the redress calculation that:
  - his redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
  - a straightforward way to invest his redress prudently is to use it to augment his personal pension
- offer to calculate how much of any redress Mr T receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr T accepts IFM's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr T for the calculation, even if he ultimately decides not to have any of his redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr T's end of year tax position.

Redress paid to Mr T as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, IFM may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr T's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

Where I uphold a complaint, I can award fair compensation of up to £170,000, 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 £170,000, 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 T the compensation amount as set out in the steps above, up to a maximum of £170,000.

<u>Recommendation:</u> If the compensation amount exceeds £170,000, I also recommend that Inspirational Financial Management Ltd pays Mr T the balance.

If Mr T 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 T can accept my decision and go to court to ask for the balance. Mr T 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 T to accept or reject my decision before 25 October 2023.

Joe Scott
Ombudsman