DRN-3652318

Financial Ombudsman Service

The complaint

Mr W complained that he was given unsuitable advice to transfer his defined benefit (DB) British Steel Pension Scheme (BSPS), to a type of personal pension plan, in 2017.

Inspirational Financial Management Ltd is responsible for answering this complaint and so to keep things consistent, I'll refer mainly to "IFM".

Mr W is represented by a company in bringing his complaint but I'll refer to the comments made on his behalf as being made by Mr W himself.

What happened

In March 2016, Mr W's employer announced that it would be examining options to restructure its business, including decoupling the BSPS from the company. The consultation with members referred to possible outcomes regarding their preserved benefits, which included transferring the scheme to the Pension Protection Fund (PPF), or a new defined benefit scheme (BSPS2). Alternatively, members were informed they could transfer their benefits to a personal pension arrangement.

In May 2017, the Pension Protection Fund made the announcement that the terms of a Regulated Apportionment Arrangement (RAA) had been agreed. That announcement said that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr W's employer would be set up – the BSPS2.

In October 2017, members of the BSPS were sent a "Time to Choose" letter which gave them the options to either stay in BSPS and move with it to the PPF, move to BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make their choices was 11 December 2017 (and was later extended to 22 December 2017).

Mr W was concerned about what some of the early announcements by his employer meant for the security of his preserved benefits in the BSPS. He was unsure what to do and was referred to IFM which is responsible for providing the pension advice. Information gathered about his circumstances and objectives at the time of the recommendation were broadly as follows:

- Mr W was described as being in good health and at the time of the advice. He was 55 years old, married with no other financial dependents. He and Mrs W lived in a home with no mortgage outstanding.

- IFM failed to collect much information about Mrs W. However, we know Mr W earned around £37,000 per year in the steel industry. After all their monthly household expenses were deducted from income, it seems he and Mrs W enjoyed reasonable disposable income. Mr and Mrs W also had existing savings recorded of £20,000 but again, there wasn't very clear information recorded by IFM about where this was invested or saved.

- The cash equivalent transfer value (CETV) of Mr W's BSPS was approximately

£581,597. The normal retirement age (NRA) was 65. Mr W had evidently told the adviser he'd like to retire earlier than this if possible; the age of 57 was mentioned.

- Mr W had already joined the new TATA defined contribution (DC) pension in 2016.

IFM set out its advice in a suitability report on 20 September 2017. In this it advised Mr W to transfer out of the BSPS and invest the funds in a type of personal pension plan. IFM said this would allow Mr W to achieve his objectives. Mr W accepted this advice and so transferred out.

In 2022 Mr W complained to IFM about its advice, saying he shouldn't have been advised to transfer out to a personal pension but IFM denied it had done anything wrong. Mr W then referred his complaint to our Service. One of our investigators looked into the complaint and said it should be upheld. IFM hasn't agreed to this.

As the complaint couldn't be resolved informally, it's come to me for 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 also 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 Principles for Business ('PRIN') and the Conduct of Business Sourcebook ('COBS'). 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.

I have further considered that the regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6 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 the transfer was in Mr W's best interests.

I've used all the information we have to consider whether transferring away from the BSPS to a personal pension was in Mr W's best interests.

Having done all this, I'm upholding Mr W's complaint.

Introductory issues

IFM began gathering information at a time when there was still some uncertainty about what was happening with the BSPS and the BSPS2. There had been a number of announcements suggesting the setting up of a new BSPS2 scheme and further updates were still being issued at around the time Mr W was being advised. This included confirmation that sponsorship of the BSPS2 was planned, that details of the scheme would follow and that members would have until December 2017 to make a choice.

On 13 July 2017 IFM completed a 'fact-find' with Mr W about his financial and personal circumstances. On 28 July and again on 19 September 2017 he was given a financial illustration about a type of personal pension plan offered by a major provider and on the same day he was issued with a formal letter by IFM confirming it was advising him.

All the ongoing announcements indicated there would be forthcoming information available. In my view this meant that in order to give Mr W enough information to make a fully informed decision about what was in his best interests, I think IFM should have told him to defer making a final decision on possibly transferring away until further details of the BSPS2 were known and revised transfer values received. 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.

The announcements indicated thus far were that Mr W would be afforded time to think about his options – so the deadline in the original transfer quotation became less relevant. And waiting would've allowed IFM to carry out an analysis of the BSPS2 benefits, and to properly compare these to the alternatives, and base its advice on this. Without doing this, IFM was acting on information which it knew to be limited, so it is difficult to argue that it could properly assess whether a transfer was in Mr W's best interests.

As our investigator also explained when they issued their View letter, the amount of information collected by IFM seems short of what we'd expect to see for a pension transfer of this nature. Mr W had been referred to IFM by another financial adviser which didn't have the correct permission to give DB transfer advice. And I think the evidence shows that IFM treated Mr W's case without sufficient diligence and individuality. This was a large pension by most people's standards and much of the rationale looks very much to me like 'stock' objectives, used to support and justify the transfer-away advice. Forms and procedures that should have been completed by the IFM adviser were not fully filled out and I certainly don't think Mr W was given enough information to help him make an informed decision.

For example, as I'll also explain more about below, a proper transfer analysis report has not been forwarded to our Service. IFM implies that this has been lost. But if one was ever even produced, only very limited financial analysis found its way into the suitability report Mr W was given. I also think the information recorded about Mrs W was poor, again I set out some more comments about this further down. And finally, I agree with the investigator that the financial information sections on the 'fact-find' appear to have been hurriedly completed thus giving a less than complete picture of Mr and Mrs W's financial situation and likely priorities.

It's also my experience that professional financial advisers operating in the pensions landscape are generally well aware of the need to retain important transfer documentation. In my view, this is a long-held principle backed up by periodic guidance and rules from the Regulator. And these principles date back many years to before the *Pensions Review* process conducted throughout the 1990s. This Review followed and sought to put right widespread concerns about poor transfer advice.

I therefore think it's fair to assess the level of advice and service provided to Mr W to have been lacking in a number of areas. IFM was advising a number of clients in similar situations and it should have known that the picture concerning BSPS2 was becoming clearer. But overall, it failed to give Mr W the information he needed and it made a recommendation based on incomplete information.

<u>*Financial viability*</u>

I have considered whether there was any real rationale for transferring from a financial comparison or viability perspective. Put another way, was Mr W likely to receive higher or lower benefits as a result of transferring away from a DB scheme, such as the new BSPS2, to a personal pension plan?

As I've said, the issuing of a transfer analysis document – often referred to as a 'TVAS' – was either not completed in this case or somehow lost. This is an important part of the initial transfer assessment and in my view, its absence is a serious shortcoming.

A 'critical yield' comparison was a requirement from the Regulator at the time. When advising clients on DB transfers, the critical yield(s) would be shown in the TVAS or suitability report. In this case, this didn't happen.

A critical yield is essentially the average annual investment return that would be required on the transfer value - from the time of advice until retirement - to provide the same annuity benefits as the DB scheme. It is therefore part of a range of different things which help show how likely it is that a personal pension could achieve the necessary investment growth for a transfer-out to become financially viable. I'd normally expect to see the critical yields for retiring at the NRA which in this case was 65. If early retirement was a relevant consideration, I'd expect to see a critical yield for this too. Taking a lump-sum upon retirement – or deciding not to take one – would usually produce different critical yield rates. All this would help give the consumer important comparative information which would help them make an informed decision.

In this case, we've been sent no TVAS by IFM and so no critical yields. However I've seen that in its suitability report of 20 September 2017 IFM made one reference to growth which could be considered connected to this area. It said, *"the analysis will not represent a true picture and will arguably add no value to the process. Moreover, as your intention behind transferring is to take full advantage of pensions freedom rather than purchase a lifetime annuity in the future, the results of a TVAS are largely academic. For your information however, I can confirm that our analysis to date of the British Steel Scheme has shown that annual investment returns of typically around 8.0% p.a. are required in order to match the benefits available at 65 from the current British Steel scheme".*

In my view, what IFM was doing here was effectively departing from an established practice in pension transfer advice cases, whereby the consumer is shown the result of the analysis and, of course, the various critical yield figures. What IFM was saying above, was that it didn't consider the critical yield to be worth showing to Mr W. Instead, it gave him a 'ball-park figure' for a retirement at 65 and no critical yields were provided for an earlier retirement, even though IFM says this is what its advice was largely based on. However, in any event, IFM was also implying that to grow his pension (if transferred) by enough to make it financially worthwhile – a "typical" figure of 8% per year should be used.

Clearly, only providing Mr W with a "typical" growth rate is not acceptable as it didn't treat him as an individual. It didn't give him the information he needed. I say again, this was a large pension and no doubt very important to Mr W's financial wellbeing. But even if I were to accept IFM's ball-park growth figure of 8% as being accurate, there would be little point in transferring, from a financial perspective, to obtain only pension benefits of a lower - or even similar – level, upon Mr W reaching retirement. This means he would have to really hope to achieve *more than* 8% growth per year if he transferred. He would also have to account for the fees and charges normally associated with a personal pension plan and these would have acted as a drag on any growth he achieved if he had transferred away.

Therefore, to make out any financial case whatsoever for transferring away, I think it's reasonable there would need to be some confidence of seeing annual growth rates of over 9% until retirement. In my view, this was very unlikely, particularly as in 2017 we were in a sustained period of very low interest rates and bond yields.

Reference to these potential growth figures were only supplied for a retirement at the NRA of 65 - no figures at all were shown for an earlier retirement, even though IFM bases its defence of this complaint on Mr W being almost certain to retire at the age of 57. But in my experience, the critical yields for such an early retirement could have been even higher, which means that Mr W's transferred funds would have to grow by even more to have made transferring worthwhile. But of course, the reality here is that Mr W simply didn't know what the critical yields for an early retirement were because he wasn't shown any analysis by the adviser.

To be clear then, I think all the critical yields – whether published at the time or not - were most likely unachievable when viewed through the lens of when the advice was given, in 2017. I say this with the following in mind.

The advice was given 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 relevant discount rate was only 3.7% per year for 9 years to retirement (age 65), which is below the likely critical yield figures and certainly well below the 8% mentioned by IFM in the suitability report. For a retirement at 57, I myself have calculated the discount rate as being only 2.5%. I've also kept in mind that the regulator's upper projection rate at the time was 8%, the middle projection rate was 5%, and the lower projection rate was 2%.

IFM said Mr W had a "moderate" attitude to risk (ATR) which shows he would probably not have achieved close to the growth rates I've mentioned above. But I consider even this ATR was too high. There were no examples of Mr W having any past experience in 'money market' investment funds, so I don't think he had any history to draw upon. There was also no evidence that his £20,000 in savings was kept in anything other than a normal deposit savings account. And I think the questions he answered about risk showed he was uncomfortable with loss, particularly given his age and the limited time he'd still have to make any investment losses up ahead of his eventual retirement.

I therefore think that growth assumptions at the lower end of the regulator's range and close to the discount rates were appropriate in his case. The personal pension plan fund also said the average annual growth in a personal plan might only be around 2.44%. So, if IFM was ever assuming growth close to or over 8% (the probable critical yield), this wasn't credible.

I therefore think it's fair to say that from a financial comparison perspective, IFM's own estimated figures, shown in its suitability report, showed that transferring to a personal pension plan would mean Mr W would likely receive lower pension benefits in the longer term if he transferred away, when compared against the BSPS. But IFM could and should have calculated the comparisons for Mr W when the situation with BSPS2 had become clearer – we know this was becoming available at around the very time the suitability report was published.

IFM now says the critical yields for comparisons with the PPF would have been much lower percentages. But I don't think Mr W would have wanted to voluntarily enter the PPF and in any event, the percentages would have related to its *reduced* benefits. But again, the point here is that the adviser didn't comprehensively go through these things with Mr W. If IFM is implying now that these yields were important, then by definition, it seriously failed Mr W by advising him to transfer away without first discussing alternative plans with him in detail.

I've also considered some projections IFM used to help show that if he transferred out to a personal plan, the funds could last Mr W well into retirement. I think it's fair to say these were certainly not comparing like-with-like. What IFM was showing Mr W were comparisons with plans which lacked the guarantees and benefits of a DB scheme. They relied on investment risk which I think was too high, factored in over many years and based on past performance. Some of the scenarios showed Mr W running out of money at certain ages, but his DB scheme would have been guaranteed for life.

Of course, according to IFM, its recommendation that he should transfer out to a personal pension was not wholly based on the financial comparisons with his current scheme alone. Rather, IFM said Mr W also had other reasons to transfer away and these were mainly based around a retirement at 57. So, I've thought about all the other considerations which might have meant a transfer was suitable for him, despite providing the overall lower benefits mentioned earlier.

I've considered these below.

Other needs and objectives

I've considered with care everything IFM has said about the rationale for transferring. And I think it's fair to summarise the reasons it set out as being around greater flexibility and meeting some of the aspirations Mr W had for retirement. The suitability report noted the following reasons for the recommendation to transfer away:

- *You want to ensure you can retire when you want and do not want to take the risk of having restrictions in place when the scheme enters the PPF or it becomes the 'new' British Steel Pension Scheme.*

- *You require the flexibility to control and tailor the frequency and amount of income you receive from your pension fund in retirement to suit your circumstances, needs and tax position, as opposed to the pre-set (albeit guaranteed) income that your existing defined benefits pension would provide.*

- *You are prepared to accept more risk in return for greater flexibility over when and how benefits are withdrawn from your pension fund.*

I have considered all these issues with care.

- *Retiring early*

I've considered whether the references to an early retirement made in the documentation from the time were credible.

Firstly, I think it's important to note that Mr W had only referred to the possibility of retiring at the age of 57. In my view, this was clearly aspirational rather than a definite plan. I say this because whilst the 'fact-find' did mention an early retirement at that age, it also added, *"if transferred"*. In addition to this, the suitability report said, "*you explained to me that you would like to retire around 57 and question whether the pension offered by the British Steel scheme will be sufficient to allow this"*. I've noted too, that as of the time of writing this final decision, Mr W still works. And whilst he's accessed some of his transferred monies, he has used this to gift some to close relatives and he hasn't needed to access a regular drawdown income as a type of pension. Asked about what he might have done if he had realised transferring wasn't in his best interests, Mr W says he'd have joined BSPS2 and not accessed his pension benefits early for non-essential purposes, or where other routes could have been explored.

I therefore think that an early retirement at the age of 57 was only an idea at the time. More importantly, it was also wholly predicated on Mr W transferring out of a DB scheme and into a personal pension plan. And whilst I accept that Mr W may well have originally wanted, like most people, to retire as early as he could, there's no evidence that he had any concrete retirement plans at the time the advice was given. I think he was simply thinking about what his options might be and whether they would be affordable.

The adviser should have also known that retiring at 57 is comparatively young and will normally require significant financial resources to support it. Mr W may have had a relatively good pension CETV, but I think IFM failed to collect relevant information about Mrs W's financial circumstances, in particular whether she had any earnings, pensions or savings of her own. Also, IFM's job here wasn't to simply transact what Mr W might have thought sounded like a good idea. IFM was being substantially paid for this advice and so I think Mr W had every right to expect it would come from someone with the right knowledge. The adviser's job was to recommend what was in Mr W's overall best interests. But I don't think this happened.

I say this because I think the adviser started from the position that transferring away was the much better option and they didn't deviate from that course. References to Mr W possibly retiring from the new BSPS2 early were described as pension 'penalties' rather than actuarial reductions caused by him accessing a pension earlier and therefore, for a much longer period. So, I think this portrayed DB pensions generally in a very negative dimension to Mr W. The adviser also seemed to question whether entering the PPF and retiring early from that scheme was even allowed under the rules. Both these issues needed substantial explanations and I don't think this happened either. So, from the outset, the advice was predominantly focused on Mr W just transferring away to a type of personal pension plan at the age of 57.

However, Mr W was still in good health and fully able to work. So, I don't think there was any reason why the adviser didn't at least challenge the apparent desire to retire so young, or at least make out the case for retiring early having become a member of the BSPS2, a DB scheme which contained substantial guarantees. Advice of this nature might have been more realistic and also more suited to Mr W, if he'd been told early retirement could require him working for just a little longer.

But I don't think the adviser really considered all of Mr and Mrs W's retirement needs and financial circumstances when making the recommendation to transfer to a personal pension plan. In particular, no real assessment of how much they would need to live comfortably in retirement was carried out. IFM says now that this is because, upon a retirement at around the age of 57, this was only two years away from the point of advice in September 2017. It says Mr and Mrs W's expenditures would be unlikely to change and so what they were spending 'now' would broadly continue into early retirement.

The suitability report from the actual time of the advice doesn't say this, but I've considered what IFM says now in any event. The 'fact-find' showed their monthly outgoings in 2017 as being a very modest £750 per month. They also had £20,000 in cash savings, no mortgage, no other borrowing and no major financial liabilities.

So, I don't think there's anything showing why Mr W's pension entitlements with the proposed BSPS2 wouldn't have easily met his and Mrs W's anticipated income requirements, without any need to transfer away from the DB scheme. We know that IFM said his estimated pension for the DB scheme at the NRA might be around £25,638 per year. It also estimated it might be around £18,000 per year at the age of 57. And if taking a reduced pension at 57 together with a tax-free lump sum IFM estimated this would be £12,700 annually and £85,000 in cash. All these scenarios comfortably cater for what Mr and Mrs W's income needs apparently were if using IFM's own figures and responses.

These were BSPS figures, but that doesn't really matter because current members were being given similar estimates about the new scheme (BSPS2) around the time this advice was being sought.

I therefore think Mr W's circumstances here were much more aligned to him moving to the BSPS2 and retiring from that when he felt he was ready to do so. All the evidence pointed to him still being able to potentially still retire earlier than the age of 65 if he felt he really needed to. Doing this from the position of BSPS2 was possible – there would have been an actuarial reduction involved, dependent on his age at the time. But his income requirements for his retirement appeared to be easily met, again, using IFM's own figures.

So, all this means I've seen nothing explaining why Mr W wouldn't want to continue with membership of a DB scheme and to use that scheme in exactly the way it was originally intended. There was no apparent need to transfer to a personal pension plan.

- *Flexibility and control*

IFM basically said he'd be able to select the timing and type of benefits taken at retirement and also vary his retirement income. It also implied he'd be able to 'bridge the gap' between an early retirement at 57 and his state pension age which was 67.

But I can't see that Mr W required flexibility in retirement in the way the adviser suggested. In any event, flexibility was poorly defined by IFM. I therefore think this was no more than a 'stock' objective used to help justify the recommendation to transfer out to a personal plan.

There was also no evidence showing there was any income shortfall between the ages of 57 and 67 and so no apparent need to give up a guaranteed pension for life with additional benefits, such as a spouse's pension if he died first. And I've seen no wider examples which showed Mr W required changing how his retirement benefits ought to be paid. He didn't, for example, have other forms of income from either himself or his wife which fluctuated and where an additional (or indeed, a lower) pension income might be needed to 'iron out' irregular revenue.

Mr W also had already started a new and more flexible DC pension with his job. In my view, it's easy to discount the value this added. I accept this DC pension was only a year or so old, but it was being substantially contributed to by both Mr W and his employer. Mr W would also have been able to increase contributions in the years ahead if he felt this was warranted as his current income surplus certainly seem to support this. And of course, if he had worked until the NRA, this might have contained over 10 years' worth of benefits. Alternatively, if he'd worked until, say, the age of 60 for example, he could have built up over 5 years' worth of benefits.

So, even though this secondary pension was a moderate affair, it could have contributed towards Mr W obtaining any flexibility he might have needed in the years ahead. Indeed, I think that by retirement, whenever it eventually came, Mr W could have been in an agreeable position. On one hand he'd have an existing DB scheme of considerable value. This would contain all the guarantees and benefits that such schemes normally bring which tend to include a promise to pay a known pension for life. It's fair to say that significant indexation guarantees were going to exist within BSPS2 and the scheme was still underpinned by the PPF. On the other hand, he'd have also built up a small DC scheme. Admittedly, this would have been over a much shorter period of time – but much would depend on future contribution rates and / or when Mr W eventually decided he'd like to retire. He could have used his apparent disposable income to build this pension up ahead of retirement. I therefore think this secondary pension afforded Mr W a limited degree of flexibility which IFM didn't really consider or discuss with him.

I've also seen no credible evidence that Mr W had either the capacity or desire to exercise control over his funds. With his DB scheme, Mr W was being offered the opportunity to move into the new BSPS2. It's true there were some differences in this scheme when compared to the original BSPS, but it remained a DB scheme nonetheless and was run for him by trustees. The evidence here is that Mr W himself had little knowledge and experience of these types of 'money market' investments and I think he would have found the complexity, scale and responsibility of managing around £580,000 of transferred funds to be onerous in the years ahead. What I've seen tends to show Mr W would have required ongoing financial advice and support, all of which would cost him money which his DB scheme didn't require from him.

Overall, I've seen nothing showing Mr W needed a flexible income. In my view, all the evidence shows the opposite: when retirement eventually came, Mr and Mrs W probably needed a steady income source. And as for his desire to control his pension, again, there's simply no evidence this was the case.

- *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 BSPS and BSPS2 contained certain benefits payable to a spouse if Mr W died. Mr W was married.

Prior to retiring and drawing benefits from the DB scheme, a payment based on Mr W's contributions would have been payable as a lump-sum to Mrs W if Mr W pre-deceased her. If he died later, whilst drawing on the DB pension, Mrs W could have been paid at least half his pension for the rest of her life. As I've explained earlier, there's no evidence recorded of Mrs W having her own personal pension. So, I think these types of benefit found in a DB scheme would have been of great comfort to Mrs W in the event of something unexpected happening to her husband.

Alternatively, I think the adviser discussed with Mr W that he'd be able to pass on the whole value of a personal pension if he died, potentially tax-free, to anyone he nominated. I think this was probably portrayed as a flexible and better death benefit for Mr W. But whilst I appreciate death benefits are important to consumers, and Mr W might have thought it was a good idea to transfer the BSPS to a personal pension because of this, the priority here was to advise him about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think IFM really explored to what extent Mr W was prepared to accept a different retirement income in exchange for different death benefits.

Mr W was still only 55 and in good health. An obvious drawback with a personal plan's death benefits is that the amount left to pass on – to anyone – may be substantially reduced as the pensioner starts to withdraw his or her retirement income. Although I've questioned the ability to forecast an early retirement whilst still relatively young, there's no real doubt that retiring at 57 was at least mentioned – IFM's defence of this complaint is effectively predicated on this. The adviser should have therefore additionally known that a healthy male retiring at 57 would likely have many years ahead in which he would be drawing down his pension funds thus leaving less to pass on to someone.

I think life insurance was probably discussed in this case and I've noted that whilst employed, Mr W had some death in service protection. Also, at 55 years old, a modest 'term' life insurance policy may have still been a reasonably affordable product for Mr W if he really did insist on leaving a lump-sum (rather than an annual pension) legacy for Mrs W, or indeed anyone else such as a child. Mr W could also have nominated a beneficiary of any funds remaining in his 'new' albeit much smaller DC scheme. Therefore, to that end, Mr W still had some options ensuring part of his pension wouldn't die with him.

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

Concerns over financial stability of the DB scheme

I can understand that when Mr W met with IFM he may have been concerned about the overall financial stability of the BSPS pension. Lots of his former colleagues at the time were considering transferring out of the scheme and he may have worried that his pension could end up in the PPF. However, if the scheme did end up moving to the PPF, I think the adviser should have explained that this was not as concerning as Mr W thought.

He was never presented with critical yield figures relating to a comparison with the PPF but in my view, he was still unlikely to match, let alone exceed, the benefits available to him through the PPF if he transferred out to a personal pension plan. I don't think that this was properly explained to him. So, I don't think that these concerns should have led to IFM's recommendation to Mr W to transfer out of the DB scheme altogether.

Other issues

I've comprehensively considered the original complaint as put forward by Mr W's adviser. It said the *"complaint* [was] *that a transfer into a private arrangement should not have been recommended … and that the nature of the benefits which could have been carried forward into British Steel Pension Scheme 2 are highly unlikely to be matched through the private arrangement which your firm recommended*".

Our investigator originally issued a View upholding the complaint. But they said any redress ought to assume he'd have transferred into the PPF. I can see their thinking was because we do know that in certain situations, particularly when an early retirement is considered imminent, the PPF often offered slightly higher benefits than the BSPS2.

So, our investigator thought if suitably advised, a likely scenario would have seen Mr W moving into the PPF and then 'retiring' early from that scheme at the age of 57. On the other hand, Mr W's adviser has said that it could also be argued in this case that BSPS2 should be the comparative redress scheme we should use when awarding and calculating any redress. It implied that the higher redress of these two scenarios should be what Mr W should be awarded.

I’ve considered these views. I’ve also looked carefully over all the documents we have. And I have taken a different view about how redress ought to be calculated.

I do acknowledge that the age of 57 was mentioned as a potential retirement age during the advice sessions. But I’ve also explained why I don’t think this was necessarily set in stone – the age of 57 was no more than a retirement aspiration. Also, even though I do accept that after transferring to the personal plan as recommended by IFM, Mr W did actually start to draw *some* benefits from his pension before what was his NRA of 65, I don’t think this necessarily means the redress calculation should follow that logic.

This is because I’ve explained that Mr W’s early retirement was aspirational. I also think that the only reason he went on to access some of the transferred benefits early was because IFM had effectively made this possible. In short, accessing the pension in his late fifties was only made possible by the unsuitable advice IFM had given to him. It advised him to transfer and so it created an opportunity which, in my view, shouldn’t have ever existed in the way it did.

I think it’s also important to take into account that whilst Mr W has accessed some benefits from his transferred pension, he hasn’t started to drawdown his funds regularly as I understand it, as one might expect when drawing regular retirement income.

So, I think if Mr W had been advised suitably, he would have moved to the BSPS2 and also delayed retirement beyond the age of 57. He’s still working now (aged over 60), albeit less hours. And as I understand it, his good health at the time of the advice would have supported him continuing to work for a little longer than 57, even if working in the steel industry wasn’t something that would have been his most preferred choice at the time. So, what I’m saying is that if the adviser had shown Mr W that remaining in a DB scheme such as BSPS2 was right for him, and also that some extended working beyond the comparatively young age of 57 would be advantageous, this would have been the much better financial prospect in the longer-term. It would have been much more in his best interests and I think Mr W would have agreed to this.

This leaves me considering that if not retiring at the age of 57 then when might he have retired? To simply pick an age would be rather speculative and I’d be ‘unwinding’ everything we know that has now happened as a result of unsuitable advice. What I can say is that Mr W’s original NRA was 65 and he should have been advised to move to the BSPS2 which also had an NRA of 65. The advice which effectively caused him to transfer and later to start taking some pension benefits early was flawed. He was also healthy and I know he has worked beyond the age of 57 and is still working, albeit reduced hours.

On this basis I think it’s fair to award redress assuming retirement at the BSPS2’s NRA – the age of 65.

Suitability of investments

IFM recommended that Mr W invest his funds in a personal pension. As I’m upholding the complaint on the grounds that a transfer out of the DB scheme wasn’t suitable for Mr W and I don’t think he would’ve insisted on transferring out of the scheme if clear advice had been given to him, it follows that I don’t need to consider the suitability of the investment recommendation. This is because he should have been advised not to transfer and so the investment in the new funds wouldn’t have arisen if suitable advice had been given.

Summary

I don’t think the advice given to Mr W was suitable.

As a regulated adviser being paid for this advice, IFM's job was to provide information and advice that was in Mr W's best interests. Instead of assessing whether Mr W might meet his retirement objectives by becoming a member of BSPS2, the adviser focussed wholly on transferring away.

Mr W was giving up a guaranteed, risk-free and increasing income within the BSPS2. IFM failed to provide Mr W with critical yield figures that were personal to him. This conflicted with the guidelines of that time and meant that Mr W wasn't able to make an informed decision. Even so, the restricted information he was given about whether a transfer might be financially viable, strongly suggested that he'd receive lower retirement benefits as a result of transferring away to a personal pension plan.

I also don't think there were any other particular reasons which would justify the transfer and outweigh this. The implication that Mr W was certain to retire early wasn't borne out by the evidence. Neither was his apparent needs for flexibility and control of his funds, moving forward. These things weren't properly defined and like the advice around death benefits, they represented nothing more than 'stock' objectives used to justify the transfer-out recommendation.

So, I don't think it was in Mr W's best interests for him to transfer his DB scheme to a personal pension when he had the opportunity soon of opting into the BSPS2. I also don't think that it was in his interest to accept the reduction in benefits he would have faced by the scheme entering the PPF. By opting into the BSPS2, Mr W would have retained the ability to transfer out of the scheme nearer to his retirement age if he really needed to. The annual indexation of his pension when in payment was also more advantageous under the BSPS2.

On this basis, I think IFM should have taken a short time to consider all the changes in the BSPS and then duly advised Mr W to opt into the BSPS2.

I have considered, given the circumstances of the time, whether Mr W would have transferred to a personal pension in any event. I accept that IFM disclosed some of the risks of transferring to Mr W, and provided him with a certain amount of information. But ultimately it advised Mr W to transfer out, and I think Mr W relied on that advice.

I'm not persuaded that Mr W would have insisted on transferring out of the DB scheme, against IFM's advice. I say this because Mr W was an inexperienced investor and this pension accounted for most 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, I think he would have accepted that advice.

In light of the above, I think IFM should compensate Mr W for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Putting things right

A fair and reasonable outcome would be for the business to put Mr W, as far as possible, into the position he would now be in but for IFM's unsuitable advice. I consider Mr W would have most likely opted to join the BSPS2, rather than transfer to the personal pension if he'd been given suitable advice and compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance. IFM should use the benefits offered by BSPS2 for comparison purposes.

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 regulator'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. A copy of the BSPS calculator output should be sent to Mr W and our Service upon completion of the calculation together with supporting evidence of what the business based the inputs into the calculator on.

This calculation should be carried out using the most recent financial assumptions in line with DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr W's acceptance of my final 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 W redress as a cash lump sum payment,
- explain to Mr W before starting the redress calculation that:
    - their redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
    - a straightforward way to invest the redress prudently is to use it to augment their DC pension
- offer to calculate how much of any redress Mr W receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr W accepts IFM's offer to calculate how much of the redress could be augmented, request the necessary information and not charge Mr W for the calculation, even if he ultimately decides not to have any of his redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr W's end of year tax position.

Redress paid to Mr W as a cash lump sum will be treated as income for tax purposes. 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 W's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

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.

This pension at the time represented most of Mr W's retirement provision. I believe the uncertainty and worrying impact of this unsuitable advice caused him distress and inconvenience. I therefore also order IFM to pay an additional £300 to Mr W.

My final decision

Determination and money award: I am upholding this complaint and I now direct Inspirational Financial Management Ltd to pay Mr W the compensation amount as set out in the steps above, up to a maximum of £160,000.

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

If Mr W accepts my final decision, the money award becomes binding on Inspirational Financial Management Ltd.

My recommendation would not be binding. Further, it's unlikely that Mr W can accept my decision and go to court to ask for the balance. Mr W 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 W to accept or reject my decision before 11 October 2023.

Michael Campbell
Ombudsman