DRN-3654593

The complaint

Mr A complains about the advice given by Inspirational Financial Management Ltd ('IFM') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme, the British Steel Pension Scheme ('BSPS') 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 A'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'), or a new defined-benefit scheme ('BSPS2'). The PPF acts as a 'lifeboat' for insolvent DB pension schemes, paying 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. Alternatively, members of the BSPS 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 included that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr A's employer would be set up – the BSPS2. The RAA was signed and confirmed in August 2017 and the agreed steps were carried out shortly after.

On 18 September 2017, the BSPS provided Mr A with an updated summary of the transfer value of his scheme benefits, following the RAA taking effect. These benefits had a cash equivalent transfer value ('CETV') of £640,138.45.

In October 2017, members of the BSPS were sent a "time to choose" letter which gave them the options to either stay in the BSPS and move with it to the PPF, move to the BSPS2 or transfer their BSPS benefits elsewhere.

Mr A was also first in contact with IFM in October 2017. He's told us a friend of his, who was also a member of the BSPS, gave him IFM's contact details. And he says he was looking for advice about what was the best option for him, given the ongoing uncertainty and negative things he'd heard about the PPF.

IFM emailed Mr A a fact find to complete and return, to gather information about his circumstances and objectives. Mr A was 46, in good health married with three children, two of whom were financially dependent. Mr A was employed, earning £53,000 per year. Mrs A was also employed with a recorded salary of £33,000 per year. They owned their own home and had an outstanding mortgage of approximately £36,000 with 10 years left to run. They also had unsecured debt through credit cards and loans of around £50,000. No savings or assets, beyond their property, were recorded – although the form doesn't appear to have included a section requesting this information. Mr and Mrs A's income exceeded their outgoings by approximately £590 per month. Although their disposable income per month was said to be closer to £300.

In addition to the benefits held in the BSPS, Mr A was also a member of his employer's new defined contribution ('DC') pension scheme, to which he and his employer were making combined contributions equivalent to 16% of his salary. But he noted that the BSPS pension made up the majority of his retirement provisions at that time.

Mr A said the earliest he would plan to retire was age 60 but that didn't mean he would want to and he said realistically he expected to retire at age 65. While he said he had no real plans for tax-free cash he thought it might make sense to take this at age 55 and clear any remaining debts and make home improvements. There was nothing recorded in the fact-find about his expected income needs in retirement. Mr A indicated he was interested in lump sum death benefits available from a personal pension. And he had concerns about what had happened to that point with the BSPS and so was interested in control and flexibility. But he was also asked to rank his priorities and noted that improving the security of his pension was his number one priority.

Mr A was also asked to answer questions about his attitude to risk. This included to self-assess which from a number of profiles best summarised his attitude, to which Mr A indicated he believed he was a 'balanced' investor.

Mr A returned the fact find via email to IFM and asked about its fees for advice. I can see that IFM replied on 30 October 2017, confirming how much it would charge and asked Mr A "*if you would like us to proceed with the transfer for you".* Mr A indicated he would like to go ahead, and a follow up meeting was arranged for 13 November 2017.

At the meeting on 13 November 2017 Mr A signed a copy of IFM's terms of business. Forms were also signed and completed to authorise the BSPS to pay the transfer value to a new pension arrangement. And application forms were also signed, and dated the following day, for a new personal pension. So, it appears he was verbally advised to transfer during that meeting.

IFM then issued a recommendation letter, dated 14 November 2017, in which it advised Mr A to transfer his pension benefits into a personal pension. The suitability report said Mr A's objective was to transfer his pension to provide him greater flexibility when drawing benefits. It also said ensuring the pension would not die with him was important and that he placed greater value on having control over his pension fund than having a guaranteed income. And it said his desire to retire early might not be met by the existing scheme. So, IFM said it recommended a transfer as this would provide Mr A flexibility in how and when he could take his benefits and he was prepared to accept greater risk in return for this. It recommended a new pension provider and fund that it said met Mr A's attitude to risk, as IFM said it had established he was willing to take a moderate level of risk.

Mr A complained in 2022 to IFM about the suitability of the transfer advice. He said he'd recently received a letter from the regulator, the Financial Conduct Authority ('FCA') saying he might've received unsuitable advice to transfer out of the BSPS. He said he was concerned he'd now lost the guaranteed benefits he was entitled to and IFM had failed to consider how his existing scheme could've met his needs in retirement.

IFM didn't uphold Mr A's complaint. It said it thought the advice was suitable as it provided him flexibility and the ability to achieve his other objectives.

Mr A referred his complaint to the Financial Ombudsman Service. One of our Investigators considered it. He thought it should be upheld and that IFM should compensate Mr A for any loss the DB transfer had led to and pay him £300 for the distress caused. He noted that IFM had asked Mr A if he wanted to proceed with a transfer before it provided him advice. Which the Investigator thought suggested an outcome had already been determined by IFM. In any event though the Investigator noted, when Mr A completed the fact find he'd said the security of his pension had been his main priority. And Mr A had explained that he took advice because of concerns about what the PPF meant for that security. So, the Investigator didn't think the reasons given for transferring were Mr A's main priorities at the time of the advice. He felt Mr A was unlikely to improve on the pension benefits he already held as a result of transferring. And the Investigator didn't think, given how long Mr A had until retirement, that he needed to transfer at that stage, as his plans were largely unconfirmed. So, if suitable advice had been given, he felt Mr A would likely have retained his DB scheme benefits and joined the BSPS2.

IFM disagreed as it felt the advice had been appropriate based on Mr A's stated objectives. It also said that the FCA had reviewed the advice, as part of its work in relation to pension transfers from the BSPS, and had said it was suitable.

The investigator wasn't persuaded to change their opinion, noting that the FCA and Financial Ombudsman have different roles and remits. So, he said he still didn't think the advice was suitable. As agreement could not be reached, 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 on board what IFM has said about the FCA having already reviewed this advice. And I've looked at the summary it has provided. It would appear though that the review by the FCA only involved the input of one of the parties. And I don't know how much information it had access to or considered. In addition, the Financial Ombudsman Service and the FCA have different roles and remits. Unlike the FCA our role is not a regulatory one. We are tasked with looking beyond simply whether a business has complied with its regulatory requirements. Instead, we consider information from both parties and decide, while having regard for relevant law and regulations, what we consider to be fair and reasonable in the circumstances of the complaint. So, I don't think the FCA having undertaken a separate review impacts our consideration of this complaint or prevents me from reaching my findings independently of the FCA's consideration.

In considering this complaint I have taken into account the 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 Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS'). But I've also considered what both parties have said provided. 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. This includes COBS 19.1.6G in which the regulator states 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 A's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

The process IFM followed

IFM emailed Mr A on 30 October 2017 asking if he'd like it to proceed with the transfer for him. This was before any advice had been provided. This effectively put the decision to transfer onto Mr A, without giving him any indication of whether it was in his interests. He wasn't in an informed position at that point to make that decision and so I don't think IFM was acting in his interests by asking him this question. A more appropriate process would've been for it to provide him advice and allow him to consider this, before going ahead.

In addition, all of the relevant paperwork to proceed with the transfer then seems to have been completed on 13 and 14 November 2017. IFM met with Mr A on 13 November 2017, so the majority of this paperwork seems to have been completed at that time. The suitability report was dated 14 November 2017, so it doesn't seem likely Mr A had sight of this before he agreed to proceed. And, given when all of the forms were signed, it certainly, in my view, appears unlikely that he'd have had time to consider its contents before proceeding. It again therefore doesn't appear that Mr A was given any time to consider the advice, before being directed towards transferring. Which, given the significance of the transfer again doesn't appear to have been in his interests.

I don't know what was discussed in the meeting of 13 November 2017 and there don't appear to be any meeting notes from the time available. So, in the circumstances, I think it's fair to assume that the contents of the recommendation letter likely best reflected the advice that was given to Mr A. But, for the reasons I'll now explain, I think there was information omitted from this that was important. And I don't think a transfer was in his interests.

Financial viability

IFM was required, by the regulator, to carry out a transfer value analysis ('TVAS') report at the time of the advice here. It has said that it did so, but a copy of the report is no longer available. One of the things that should have been calculated as part of the TVAS was the critical yield - how much Mr A's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme at retirement.

The suitability report refers to this having been calculated. It says that this comparison was made to the expected benefits at age 65. But it downplayed the significance of this, as it said it was known that the BSPS was not going to continue, and that Mr A didn't intend to replicate the benefits he held. So, it said this was largely academic. But I don't agree with IFM that this was not an important consideration. Again, it was required by the regulator and gives an important indication of the value of the benefits Mr A held.

IFM said in the recommendation that the critical yield, although it didn't refer to it as that, was 'around 8%' in respect of the BSPS benefits available at age 65. And to match the benefits the PPF was likely to provide at age 65 the critical yield was 'around 4%'.

I note though, in response to Mr A's complaint, when it explained it didn't have a copy of the TVAS to refer to IFM said *"Our extensive research on behalf of many scheme members resulted in critical yield figures of around 6-8%. It was established over time that critical yield figures for older members were higher than for younger colleagues. We considered that quoting a rate at the upper end of the scale however, and the 'worst case' scenario this represented, meant we built-in a high level of tolerance".* While IFM has said that a TVAS would have been completed, its inability to produce one, this explanation and the lack of quoting a specific figure, because it said the growth required was *"around 8%"*, to me casts doubt on whether a TVAS, specific to Mr A's circumstances, was completed here. Rather it seems to indicate IFM may just have been quoted a generic critical yield of 8% as a *"worst case scenario"*. In which case IFM would not have done what was required of it.

However, even if the figures that IFM has referred to in the suitability report were based on a TVAS specific to Mr A's circumstances, I don't think IFM's analysis has gone far enough. It was required to compare the benefits likely payable under the DB scheme and those that an alternative pension might offer and provide Mr A with sufficient detail so that he could make an informed decision. But I don't think it has done so here.

Firstly, it is unclear whether the critical yield figures were based on taking a full annual pension from either the BSPS or PPF at age 65 or taking the maximum possible tax-free cash and a reduced annual pension. As these two options tend to produce different critical yields, I'd have expected to have seen both figures quoted, for both the BSPS and the PPF, and explained. And I also can't see any reference in monetary terms to what the PPF was likely to pay Mr A from age 65. In my experience this information tends to be produced when a TVAS is completed. And I think this would've been important information to provide to Mr A to consider, so that he could make an informed decision.

IFM also doesn't appear to have produced any critical yield figures in respect of the benefits that would be provided by either the BSPS or the PPF at age 60. Nor estimates in monetary terms, of the benefits either would provide. Given the suggestion that Mr A may look to retire at that point, I think producing information about what he could expect to receive in monetary terms and the critical yields that would be required to replicate those benefits would again have been appropriate. And, in order to give Mr A enough information to make an informed decision, I think this is something IFM should've done.

On top of this, the limited comparison that IFM seems to have carried out was based on matching Mr A's existing scheme, the BSPS. But Mr A 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. Yet there is no evidence of a comparison being carried out by IFM to the benefits the BSPS2 would've offered. And I think there should've been.

The restructuring of BSPS had been ongoing for a significant amount of time by the point IFM advised Mr A. And Mr A's employer had agreed actions with the pension's regulator, and these had been carried out as scheduled – not least a lump sum payment into the BSPS which enabled the provision of improved transfer value quotations in September 2017. Mr A had also received his "time to choose" pack – with joining the new scheme one of the options. Details of the new scheme had been provided; the BSPS2 would've offered the same income benefits as the BSPS but the annual increases would've been lower. And the rates of revaluation and escalation were available. So, based on what had happened to the point advice was given, I think the relevant parties were confident that the BSPS2 would go ahead. And there was sufficient information available for a TVAS to have been completed looking at the benefits the BSPS2 would've offered at age 65 or 60. And I think that comparison should've been produced and factored into the advice so that Mr A was able to make an informed decision. And without this, I'm not sure he was in a position to truly understand the value of what IFM recommended he give up.

These significant failing notwithstanding, I've considered the limited comparison of benefits that does seem to have been done.

Again, IFM indicated the critical yield to match the benefits the BSPS would've provided at 65, although the basis of these – full pension or maximum tax-free cash and reduced pension – is unclear, was "around 8%". And to match what the PPF would've offered at age 65 was "around 4%".

While again a comparison of BSPS2 benefits was not produced, even though I think it should've been, I can make reasonable assumptions about what these would've been – assuming the critical yield figures that IFM has quoted were accurate in Mr A's specific circumstances. The BSPS2 would've offered the same income benefits as the BSPS but the annual revaluation pre-retirement and escalations post-retirement would've been lower. The lower annual increases under the BSPS2 would've likely decreased the critical yields somewhat compared to the BSPS. But, based on my experience of other complaints, I still think they would've likely been higher than those reflecting the PPF, and, particularly at age 65, closer to those of the BSPS.

The advice was given after the regulator gave instructions in Final Guidance FG17/9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published by the Financial Ombudsman Service on our website. 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 closest to when the advice was given which I can refer to was published by the Financial Ombudsman Service for the period before 1 October 2017 and was 4.4% per year for 18 years to retirement, if Mr A were to retire at 65. I've kept in mind that the regulator's projection rates had also remained unchanged since 2014: the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

I’ve also seen a copy of a projection from the time produced by the pension provider IFM recommended. And this said, at that point, the anticipated growth rates of the funds that IFM said Mr A should invest in were between 2.57% and 2.69%.

I've taken all of this into account, along with the composition of assets in the discount rate, Mr A’s attitude to risk and also the term to retirement. There would be little point in Mr A giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme. But here, on balance I think Mr A was always likely to receive benefits of a lower overall value than the BSPS2 was likely to offer at age 65.

The discount rate was marginally higher than the critical yield figure of “around 4%” IFM said would need to be achieved to match the PPF benefits. So, if that critical yield figure was accurate, there appears to have been potential for him to be slightly better off if he retired at age 65 by transferring compared to if his pension had gone into the PPF. But again, I haven’t seen evidence to support that critical yield figure being specific to Mr A’s circumstances or to show that what the PPF would’ve paid Mr A from that age was calculated here, before advice was given. Nor have I seen evidence that it accounted for charges that would be payable after a transfer. By transferring from the DB scheme Mr A would have to pay the fees and charges that are required in order to invest in a personal pension. And those would reduce any gains the funds made. Those are not charges he would have had to pay if his funds had moved to the PPF.

And the discount rate was broadly equivalent to the critical yield to match the benefits from the PPF, so the scope for gains was small. If his fund had an extended period of poor performance or suffered losses he was still likely to be worse off. And Mr A would need to put his pension at risk to have the chance of achieving these marginal gains. When asked to rank his priorities, Mr A said, increasing the security of his pension was his number one priority. Which a transfer didn’t achieve. IFM’s expected critical yield to match the PPF benefits was also above what the pension provider said were the anticipated growth rates of the recommended fund. So, overall, I don’t think Mr A was likely to be better off by transferring compared to what the PPF would’ve offered at age 65.

And, while IFM does not appear to have calculated critical yields for retiring at age 60, in my experience critical yields for early retirement tend to be higher than for retiring at the normal scheme retirement age. That’s because invested sums have less time to grow and need to sustain the personal pension for a longer period. And the discount rate for retiring at 60, fell to 4.1%. So, on balance, I think it’s unlikely that by transferring Mr A could’ve improved on the benefits he’d have been due under his DB scheme at age 60 either.

IFM included a graph in the recommendation which it said showed that, if 5% growth was achieved, Mr A could drawdown an equivalent pension to that the DB scheme would’ve offered on a flexible basis and the fund would’ve lasted beyond his average life expectancy. But this was based on matching benefits he was already guaranteed while achieving consistent growth of 5% was not guaranteed and seemed unlikely based on the discount rate and providers estimated growth rates. And this doesn’t factor in any periods of losses or poor performance.

So, based on what I’ve seen, I don’t think, from a financial viability perspective, that a transfer was in Mr A’s best interests. Of course, financial viability isn’t the only consideration when giving transfer advice. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I’ve considered this below.

Flexibility

IFM's recommendation said Mr A's objective was to transfer his pension to provide him greater flexibility when drawing benefits. But this isn't reflected in the fact find. Flexibility and control of income in retirement were sixth (out of ten) on Mr A's list of priorities. And indeed, drawing tax free cash from age 55 was fifth.

And I think this is also reflected in what was written in the fact find. Mr A wrote that 60 was the earliest he would plan to retire but that didn't mean he would want to do so. He said he realistically didn't expect to retire until 65. He also said, while he thought it made sense to draw tax-free cash at age 55 and clear outstanding debt, he had no real plans for this amount. And Mr A has said that the access to tax-free cash that the personal pension was something IFM said was a positive of transferring, not one of the reasons he sought advice to begin with.

I think it's clear from these statements that Mr A's plans for retirement were uncertain. And I don't think this is surprising. At the time the advice was given, Mr A was only 46. So, it was at least nine years until he could think about accessing benefits. And as a result, I don't think Mr A required flexibility in retirement in terms of how he could access his benefits, because his needs were unknown. Rather this appears to have been a 'nice to have' instead of a genuine need.

IFM has said in one of its submissions that, if Mr A had retired at 60, the DB scheme would not have met his income needs. But I can't see that Mr A's expected income needs in retirement were recorded anywhere. And, as I've already explained, I also can't see that the income he could've received under the PPF or the BSPS2, in monetary terms, was calculated. So, I don't agree that this meant he needed flexibility in terms of how he could take his benefits – particularly given what he said about him realistically expecting to retire at 65. And again, I think he was unlikely to improve on his pension benefits by transferring.

And while Mr A indicated he thought accessing tax-free cash at the earliest opportunity to repay debts potentially made sense, IFM's role wasn't just to put in place what Mr A might've thought he wanted. It was to advise him on what was in his best interest.

Mr A and Mrs A seem to have been making repayments to their debts, both unsecured and secured, and had disposable income left over. So, there was nothing to suggest the debt repayments were unsustainable or that Mr A would've had a need to clear these from age 55. It is also unclear how much would've actually remained to be repaid. The fact-find indicated their mortgage was due to be cleared shortly after Mr A turned 55, so the balance by that time was likely to be relatively modest. And, given they were making repayments, it was unclear how much if any of the unsecured debt they had at the time of the advice would remain by the time Mr A was able to access tax-free cash.

Mr A would also have been able to access his new DC pension flexibly from age 55, to potentially assist with repaying any remaining residual debt, had he needed to. Based on his salary and the level of contributions being made, and before even accounting for growth, Mr A increasing his contributions or him being awarded pay rises, this was likely to be worth in excess of £76,000.

As a result, I don't think transferring for the future potential access to tax-free cash flexibly was in Mr A's interests at the time. And I don't think it was a suitable recommendation or in Mr A's best interests to make an irreversible decision and give up his guaranteed benefits when he did, just to have flexibility that he didn't need.

Death benefits

IFM says that the ability to leave his pension fund as a lump sum to his family, in particular his children, in the event of his death was something that Mr A was keen on. And this did feature prominently in his priorities – ranked second, just behind improving the security of his fund.

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 A. But whilst I appreciate death benefits are important to consumers, the priority here was to advise Mr A about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement, rather than a legacy to the holder's estate. And I don't think IFM sufficiently explored to what extent Mr A was prepared to accept a lower retirement income in exchange for higher death benefits.

Mr A's existing pension also provided death benefits – by way of a spouse's and dependents pension, which were guaranteed, escalated and were not dependent on investment performance like the sum remaining on death in a personal pension. So, I think these could've been useful benefits to Mr A's family. And while the CETV figure would no doubt have appeared attractive as a potential lump sum, the amount remaining on death following a transfer was always likely to be different to that figure – unless Mr A had passed away immediately, which was unlikely. As well as being dependent on investment performance, it would've also been reduced by any income Mr A drew in his lifetime. And given he was recorded as being in good health and the intention IFM seems to have based its advice on was accessing a quarter of the fund immediately at age 55 and drawing amounts flexibly from the pension from age 60, the fund could've been significantly depleted by the time it came to be passed on and may not have provided the legacy that Mr A may have thought.

And if Mr A genuinely wanted to leave a legacy for his spouse and children, which didn't depend on investment returns or how much of his pension fund remained on his death, I think IFM should've instead explored life insurance. Mr A was recorded as being in good health. And he had disposable income with which to pay the premiums for an insurance policy. Quotes could've been obtained based on how much Mr A wanted to leave to his family. And this could've been explored on a whole of life or term assurance basis, which was likely to be a lot cheaper to provide. But I can't see that IFM considered this.

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 A. I don't think that insurance was properly explored as an alternative. And ultimately IFM should not have encouraged Mr A to prioritise the potential for alternative death benefits through a personal pension over his security in retirement.

Control and concerns over the financial stability of the DB scheme

Mr A has said that he sought advice because he was concerned about what moving to the PPF might mean for his pension. And, given he noted that his main priority was improving the security of his pension, I think this likely was his concern at the time. But I don't think him having control over how his pension was invested because of these concerns was a genuine objective of his. Mr A was not an experienced investor, and I cannot see that he had an interest in or the knowledge to be able to manage his pension funds on his own. So, I think a desire for control has been overstated.

I don’t doubt Mr A, like many of his colleagues, was concerned about his pension. His employer had been consulting on its plans for the scheme for some time. And there appears to have been a general mistrust and lack of optimism. I also don’t doubt Mr A was potentially worried his pension would end up in the PPF or that he’d heard negative things about this outcome. It’s also possible that Mr A was also leaning towards the decision to transfer because of his negative perception of the PPF. And Mr A may well have had negative feelings towards his employer’s handling of his pension so far, which I think was a reasonable emotional response. But this was why it was even more important for IFM to give him objective advice.

The trustees of the pension scheme, and the new BSPS2 were not one and the same as his employer. I also note Mr A was continuing to work for the same employer, doesn’t appear to have any intention to change this and was a member of the employer’s new DC scheme. So, the relationship does not appear to have been broken down to the extent that has been suggested.

As I’ve explained, by the time of the advice details of BSPS2 were known and it seemed likely it was going ahead. The “time to choose” paperwork was clear that opting into that scheme was an option – so, I’m satisfied it was envisaged that this would go ahead. And I think this should’ve alleviated some of Mr A’s concerns about the scheme moving to the PPF.

But even if there was a chance the BSPS2 wouldn’t go ahead, I think that IFM should’ve reassured Mr A that the scheme moving to the PPF wasn’t as concerning as he thought. He didn’t have confirmed retirement plans but could’ve in any event taken benefits early under the PPF. While the increases in payment in the PPF were lower, it would still have provided a guaranteed income for the rest of his life that was not subject to any investment risk. By transferring he was taking on additional risk – despite his main objective being greater security. So, this doesn’t seem to have fit with his objectives. And, as I’ve explained, I don’t think he was likely to be substantially better off, such that taking this risk was in his interests. So, I don’t think that these concerns should’ve led to IFM recommending Mr A transfer out of the DB scheme altogether.

Suitability of investments

IFM recommended that Mr A invest in particular funds with the chosen pension provider. As I’m upholding the complaint on the grounds that a transfer out of the DB scheme wasn’t suitable for Mr A, it follows that I don’t need to consider the suitability of the investment recommendation. This is because Mr A should have been advised to remain in the DB scheme and so the investments wouldn’t have arisen if suitable advice had been given.

Summary

I don’t doubt that the flexibility, control and the potential for alternative death benefits on offer through a personal pension would have sounded like attractive features to Mr A. But IFM wasn’t there to just transact what Mr A might have thought he wanted. The adviser’s role was to separate his concerns stemming from the consultation from his genuine needs and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr A was suitable. He was giving up a guaranteed, risk-free and increasing income – actually giving him less security which was in contrast to his first priority. By transferring, Mr A 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. His retirement plans were unconfirmed, so he didn't have a need for flexibility at that time. And the potential for higher death benefits wasn't worth giving up the guarantees associated with his DB scheme, particularly when alternative methods of providing a legacy were potentially available.

So, I think IFM should've advised Mr A to remain in their DB scheme.

Mr A was nine years from when he could access retirement benefits and longer still from when he reasonably expected to retire. I don't think that it would've been in his interest to accept the reduction in benefits he would've faced by the scheme entering the PPF, as it wouldn't be offset by the more favourable reduction for very early retirement. And by opting into the BSPS2, Mr A would've retained the ability to transfer out of the scheme nearer to his retirement age if he needed to. The spouse's pension would also have been more generous under the BSPS2 as it 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. The annual indexation of his pension when in payment was also more advantageous under the BSPS2. So, I think Mr A would've opted into the BSPS2 had he been correctly advised not to transfer.

Of course, I have to consider whether Mr A would've gone ahead anyway, against IFM's advice.

I've considered this carefully, but I'm not persuaded that Mr A would've insisted on transferring out of the DB scheme, against IFM's advice. I say this because Mr A was an inexperienced investor, was only willing to accept a moderate level of risk and this pension accounted for the majority of his retirement provision. 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've accepted that advice.

I'm not persuaded that Mr A's concerns about the consultation and potential entry into the PPF were so great that he would've insisted on the transfer knowing that a professional adviser, whose expertise he had sought out, didn't think it was suitable for him or in his best interests. Particularly if it had been explained that entering the PPF was not as concerning a prospect as he might've believed. So, I don't think Mr A would have insisted on transferring out of the DB scheme.

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

Our Investigator recommended that IFM also pay Mr A £300 for the distress caused by the unsuitable advice. I don't doubt that Mr A has been caused distress and concern by finding out the advice may not have been suitable – particularly given the circumstances and uncertainty under which he first asked for this advice. And I'm conscious this upset wouldn't have happened but for the unsuitable advice. So, in the circumstances, I think the award the Investigator recommended is fair.

Putting things right

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

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 A and the Financial Ombudsman Service upon completion of the calculation together with supporting evidence of what IFM based the inputs into the calculator on.

For clarity, Mr A 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, 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 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 A'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 A redress as a cash lump sum payment,
- explain to Mr A 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 A receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr A accepts IFM's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr A 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 A's end of year tax position.

Redress paid to Mr A 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 A'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.

In addition, IFM should pay Mr A £300 for the distress caused by the disruption to his retirement planning.

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

Determination and money award: I uphold this complaint and require Inspirational Financial Management Ltd to pay Mr A the compensation amount as set out in the steps above, up to a maximum of £170,000.

Recommendation: If the compensation amount exceeds £170,000, I also recommend that Inspirational Financial Management Ltd pays Mr A the balance.

If Mr A 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 A can accept my decision and go to court to ask for the balance. Mr A 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 A to accept or reject my decision before 2 November 2023.

Ben Stoker
Ombudsman