DRN-3655448

The complaint

Mr H complains about the advice Inspirational Financial Management Ltd (IFM) gave to him 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 H's employer announced that it would be examining options to restructure its business, including decoupling the BSPS (the employers' DB scheme) from the company. The consultation with members referred to possible outcomes regarding their preserved benefits, which included transferring the scheme to the Pension Protection Fund ('PPF')[1] , or a new defined-benefit scheme ('BSPS2'). Alternatively, members were informed they could transfer their benefits to a private pension arrangement.

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

In July 2017 Mr H approached a firm of financial advisers (Firm F) as he was looking for advice about his pension and retirement options. It didn't have the relevant regulator's permission to advise on DB transfers and referred Mr H to IFM. At that time the BSPS2 was still in doubt so Mr H only had two concrete options open to him:

- Remain in the BSPS and move with it when it went into the PPF assessment process.
- Transfer to an alternate pension arrangement.

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

- Mr H was age 50, married to Mrs H who was age 40, they had one dependent child age 11.
- Both Mr and Mrs H were working. Mr H earned a salary of around £32,000 a year and Mrs H earned £26,000 a year.
- They had a net income of £3,900 a month with regular outgoings of around £2,100 a month.
- They had £2,000 in savings.

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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.

- They owned their home which was worth in excess of £160,000 subject to an outstanding mortgage of £90,000.
- He had a “conservative” attitude to investment risk.
- He wanted to retire at age 55.
- He also wanted enough tax free cash (‘TFC’) from his pension to pay off his mortgage at retirement.
- His BSPS fund had a cash equivalent transfer value (‘CETV’) of £512,344. Had he remained in the scheme, at age 65, it would have paid him a yearly pension of £28,478. The growth rate required to match that (the critical yield) from an alternative pension was 7.3%.
- At age 65 Mr H’s entitlement from the PPF was a yearly pension of £25,095. The critical yield to match that was given as 3.8%.

Mr H met with IFM on 28 July 2017. It recommended that he should transfer his DB benefits to a named personal pension. Mr H signed the forms to go ahead with the transfer that day. On 2 August 2017 IFM produced its suitability report setting out its analysis and the reasons it recommended the transfer. Amongst other things IFM:

- Summarised Mr H’s objectives as wanting to transfer his DB scheme benefits to a personal pension to allow him the flexibility to retire early.
- Said that if he were to retire at 55 his BSPS pension would be reduced by around 30%. It said at “*today’s value*” that would equate to a full pension of £14,117 a year or TFC of £66,655 and a reduced yearly pension of £10,400.
- Remarked that if his pension moved to the PPF *“the option of early retirement will be lost*.”
- Said Firm F would provide ongoing financial advice.
- Would charge Mr H a fee of £5,000 for its advice and arranging the transfer.

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

- It gave him flexibility to take an income which suited his circumstances as opposed to a guaranteed income.
- To retire when he wanted and to avoid “*the risk of the scheme entering the PPF and having to work until 65 as a result*.”
- The ability to draw higher TFC.
- He was prepared to take more risk in return for greater flexibility.

On 2 October 2017 the BSPS administrators paid a revalued CETV of £529,051 into Mr H’s newly set up personal pension.

In 2021 Mr H complained to IFM that its advice wasn’t suitable for him. IFM didn’t uphold his complaint.

Mr H brought his complaint to us. One of our Investigator’s looked into it. He didn’t think IFM had dealt with Mr H fairly. Our Investigator recommended that IFM should compensate Mr H for any losses he incurred by transferring based on a retirement age of 57. He added that IFM should pay Mr H £300 to address his distress and inconvenience arising from the unsuitable advice.

IFM didn't respond to our Investigator’s view of the complaint so it's been passed to me to make a final decision.

In the meantime, In August 2023, an insurance company completed a “buy-out” of the BSPS pensions which had moved into an assessment by the PPF. Following the buy-out the insurance company concerned took over responsibility for paying the affected members pension benefits.

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, 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’). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The applicable rules, regulations and requirements

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

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

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

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

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

Having considered all of this and the evidence in this case, I’ve decided to uphold the complaint for broadly similar reasons to those our investigator gave.

The regulator, the Financial Conduct Authority (‘FCA’), states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, IFM should have only considered a transfer if it could clearly demonstrate that it was in Mr H’s best interests. And having looked at all the evidence available, I’m not satisfied it was in his best interests.

Uncertainty and concerns about moving to the PPF

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

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

I've noted that Mr H ticked a box on the fact-find questionnaire to say he didn't value the guarantees the PPF offered. But I can't see that IFM took any steps to establish why that was or to address his concerns.

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 for those taking early retirement the PPF could have been more beneficial. But, as I go into in more detail below, IFM didn't do any analysis or comparison of those early retirement benefits from the PPF. So it's apparent that IFM made no effort to allay Mr H's fears about what a move to the PPF could mean for him. Indeed it seems IFM only added to those concerns. It did so by, entirely incorrectly, saying Mr H could not take benefits from the PPF while retiring early. That wasn't the case at all. The PPF does allow early retirement. But IFM misled Mr H on this point.

That said, even if IFM hadn't misled Mr H about early retirement benefits from the PPF I do understand that the prospect of pension benefits moving to it was for some people rather daunting. But, the benefits from the PPF were most likely not as significantly reduced as Mr H believed and those benefits were guaranteed. So it's almost certainly the case that a move to the PPF wasn't as detrimental as Mr H believed it to be.

And, as I explain below, I think it's probable that Mr H could have met his needs in retirement and retained guaranteed benefits by allowing his DB funds to move to the PPF. So, I'm not persuaded that the uncertainty Mr H experienced when he entered into the advice process was sufficient reason for IFM to recommend he should transfer his safeguarded benefits from his DB scheme, even one with the likelihood of going into the PPF. That's because to do so would unnecessarily expose those funds to the volatilities and risks of the investment markets. It follows that, I don't think those concerns should have led to IFM recommending Mr H transfer out of the DB scheme altogether.

IFM's advice process

As I expand upon below, I think there were a number of flaws in IFM's advice process. For example, as far as I can tell, the first opportunity it had to consider Mr H's fact-find information and attitude to risk was when it visited him on 28 July 2017. But, on the same day, it apparently advised Mr H to transfer out of his DB scheme and completed the application forms for him to do so that day. That was before it had given him its written analysis and recommendations. In fact it didn't send Mr H its suitability report until the following week. So, at the point Mr H accepted IFM's recommendation to transfer, the only relevant written information he had would have been IFM's TVAS, which was in itself sadly lacking in detail.

It's likely IFM would argue that it explained the content of its suitability report to Mr H when it met with him. And, as it believed he was clear about his objectives and his means of meeting those it put the wheels in motion to sort out the transfer without first putting its detailed analysis to him in writing. But there are errors and omissions in IFM's suitability report and TVAS. Most notably, IFM told Mr H that 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 TFC, are more generous than the benefits from the BSPS (or the BSPS2). So IFM misled Mr H on that point.

Further, regardless that it was aware that Mr H wanted to take early retirement IFM didn't present him with critical yield figures in its TVAS or suitability report to show how much an alternative pension would need to grow by to match the benefits from his DB scheme if he did retire early. Similarly, neither its TVAS report nor suitability report present how taking TFC and a reduced pension, rather than just a yearly pension, would affect the growth rates required to match the benefits he'd be giving up by transferring. I think that was a significant omission given Mr H said he wanted to take TFC in order to repay his mortgage.

It follows that I don't think IFM communicated with Mr H 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, so the benefits of the DB scheme are usually lost forever. But in this instance IFM made a recommendation to transfer, without having all the information Mr H needed in order to make an informed decision. And it gave him the forms to sign at the meeting for the transfer to go ahead, before it had given him sight of any in-depth written analysis of his situation and recommendation. 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.

In fact it could be argued that by failing to gather and present all the information Mr H needed in order to make an informed decision IFM was in breach of COBS rule 9.2.6. That rule says that firms should not make a recommendation to clients where it doesn't have all the necessary information to assess the suitability of its recommendation. And I'm not convinced IFM had all the information it needed when giving Mr H advice.

Financial viability

IFM carried out a TVAS (as the regulator required) showing how much Mr H's pension fund would need to grow by each year (the critical yield) in order to provide the same benefits as his DB scheme. As I've said above, IFM's TVAS only gave critical yield figures for Mr H taking a full pension from the BSPS or the PPF at age 65. IFM didn't present the critical yield if Mr H chose to take TFC and a reduced pension nor did it present any critical yield figures for Mr H taking benefits at his preferred retirement age of 55. I would expect those critical yields to be significantly higher at age 55 than at age 65. That's because for retirement at age 55 the fund would have been invested for a far shorter period. So at 55 the fund would have had less time to grow and that would result in an increase in the critical yields.

IFM gave its advice during the period when this Service 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. We find it a useful tool to establish whether an investment is likely to match or exceed the required growth rates to make a DB transfer financially viable. 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.

Mr H was 50 at the time of the advice and wanted to retire at 55. But I don't have critical yield figures for age 55. At age 65 the critical yield required if Mr H took a full pension from the BSPS was 7.3% a year. The critical yield to match the benefits available through the PPF at age 65 was 3.8%.

The discount rate at the point of the advice was 4.2% per year for 14 full years to retirement at age 65. That discount rate fell to 3% for retirement at age 55.

I've taken this into account, along with the composition of assets in the discount rate, Mr H's low attitude to risk and also the term to retirement. I've noted that while the discount rate was far below the critical yield for Mr H taking his pension from the BSPS at age 65, that wasn't an option open to him. BSPS wouldn't remain in existence, so Mr H's only real option at that time was to allow his DB funds to move to the PPF.

The discount rate was marginally higher than the critical yield if Mr H took benefits from the PPF at age 65. So there was a potential for him to be slightly better off if he retired at age 65 by transferring. But there would be little point in Mr H giving up the guarantees available to him through his DB scheme only to achieve a level of benefits outside the scheme that was broadly comparable to what he would receive from remaining in it. That's because, in order for the potential to improve slightly on the DB scheme benefits, he would need to put those funds at risk. But here, given the discount rate was broadly equivalent to the critical yield to match the benefits from the PPF, then the scope for gains was small. And, given he was a low risk investor, with only the potential for fairly low returns on his investments, transferring could result in him being worse off in retirement particularly if his fund had an extended period of poor performance or suffered losses.

Further, by transferring from the DB scheme Mr H 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 remained in the BSPS and moved to the PPF.

Also, as I've already said, Mr H's plan was to retire early. So I think the critical yields would have increased to reflect that. And, at age 55 the discount rate had fallen to 3%. I think the critical yield would have been significantly higher than that figure for early retirement from the PPF at age 55. So I think Mr H was likely to receive benefits of a substantially lower overall value than the PPF if taking early retirement, as a result of investing in line with his low attitude to risk.

For this reason alone a transfer out of the DB scheme wasn't in Mr H's best interests. Of course financial viability isn't the only consideration when giving transfer advice, as IFM has argued in this case. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered this below.

Flexibility and income needs

It seems the main reason IFM recommended Mr H transfer was for the flexibility it offered him and in particular the ability to retire early. Having considered the evidence, I don't think Mr H needed to transfer to a personal pension in order to retire early.

Mr H told IFM that his preference was to retire at 55. He's told us more recently that he's amended his plans and informed his employer that he now intends to leave work in 2024, shortly before his 57th birthday. So it appears that his early retirement plans weren't concrete at the time IFM gave its advice. Although he does still intend to leave his employment earlier than the scheme's normal retirement age of 65. So it was extremely important that IFM made Mr H's early retirement options clear to him.

I've already said that IFM incorrectly told Mr H that the PPF didn't allow early retirement. When, in fact the PPF was likely the best option for those committed to taking early retirement. That's because the manner in which the PPF calculates its early retirement benefits, including TFC sums, are more generous than from the BSPS or in fact the BSPS2 once that became viable. So the PPF would almost certainly have paid Mr H a higher TFC sum and more income – at least initially – than the BSPS would have entitled him to at age 55 (or 57).

Further, I note that IFM said Mr H couldn't afford to pay off his mortgage if he took early retirement from the BSPS. But I think that advice was also misleading. IFM's suitability report of August 2017 said that if Mr H was 55 "*today"* his BSPS benefits would reduce to £14,117. IFM also calculated that, if Mr H chose to take TFC if he retired at age 55 *today* he would be entitled to a lump sum of £66,655 and a reduced pension of £10,400 a year. IFM said this would be an insufficient sum to allow Mr H to pay off his £90,000 mortgage and wouldn't meet his income needs.

However, Mr H wasn't already 55 on the day of IFM's advice. He was 50. So in order to give him accurate figures IFM needed to revalue his pension entitlement in line with the relevant indexation the BSPS guaranteed. By my calculations that would have resulted in Mr H's yearly BSPS pension entitlement increasing to £19,934 at age 55. Alternatively – using the same formula IFM applied on its file – the BSPS would have entitled him to TFC of £94,119 and a reduced pension of £14,090. And those figures would have allowed Mr H to repay his full mortgage balance. But, IFM didn't present the revalued figures neither did it give a critical yield figure to compare what the growth rate from the personal pension would need to be in order to match those benefits at age 55.

Also, it seems IFM assumed that Mr H would not have paid any more of the capital balance of his mortgage in the – almost – five years between its advice and Mr H turning 55. That is, it said that Mr H had an outstanding mortgage of £90,000 that would need to be cleared when he retired. And as it calculated his TFC from the BSPS would only be £66,655 it indicated he had a significant shortfall if he wanted to repay the entire mortgage. But, in reality, Mr H would have been continuing to repay his mortgage in the meantime before he retired. So I would have expected the balance outstanding to have reduced during that time to a figure below £70,000. And that is comfortably below the TFC he could expect to receive from the BSPS of £94,119

Further, the TFC sum the PPF would have paid would undoubtedly have been higher again at age 55. So, I don't think it's the case that Mr H couldn't have repaid his mortgage while taking early retirement and allowing his pension to go to the PPF.

It's also notable that I can't see that IFM analysed what Mr H's income needs in retirement would be and how he would meet those. Mr H's evidence was that he had household outgoings of around £2,100 a month. That included mortgage repayments of £600 a month. So, assuming his other outgoings remained the same, and he repaid the mortgage balance at retirement, he would need income in retirement of around £1,700 a month. That's equivalent to £18,300 a year net, or roughly £20,500 a year gross. That was a higher sum than he was likely to receive from either the BSPS or the PPF if he took TFC and a reduced pension. So I think it would have been fair to say that, if Mr H was relying on his PPF income alone, he couldn't have afforded to take early retirement at age 55.

But Mr H wouldn't be relying on his retirement income alone to meet household expenses. Mr H's wife also contributed to their household costs. She is ten years younger than him and – owing to changes in legislation – the earliest she could draw her retirement benefits would be age 57. So she could anticipate earning (and continuing to pay into her own pension fund) for a further 12 years if Mr H retired at age 55. So Mr and Mrs H wouldn't be reliant on his pension income alone to meet the household expenditure. Therefore, it's not the case that he and his wife wouldn't be able to meet their household expenses if Mr H took early retirement from the PPF at age 55.

Also Mr H had relatively recently started paying into a defined contribution ('DC') money pension that both he and his employer contributed to. But IFM collected very little information about his contributions or entitlement under that scheme. However, from what I know of that scheme it was likely that Mr H and his employer were together contributing around 16% of his salary. That would equate to roughly £5,100 a year. So, without allowing for Mr H increasing his contributions, his salary growing, or any return on the investment, Mr H could have anticipated his DC fund would have grown to around £25,500 by the time he reached 55. And, he could have accessed those funds in a flexible manner while retaining the guaranteed benefits from his DB scheme had he wanted to. But I can't see that IFM put this prospect to him.

That said, it’s true to say that Mr H couldn’t have had the same level of flexible access to his DB funds. While he could have chosen to take those 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, I’m not persuaded that Mr H had any concrete need to vary his income throughout retirement. So while the option of drawing his income flexibly might seem like something that would be nice to have, I can't see that Mr H had any genuine need for that flexibility that would be worth giving up guaranteed benefits for at the time that IFM gave its advice.

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 is generally an attractive feature to consumers. That’s because whatever was left within it at the date of Mr H’s death would be passed on to his family. And, if that happened before his retirement or soon after, then that would likely be a significant sum. In contrast the PPF would pay Mrs H half of Mr H’s yearly pension after he died. And that pension would die with her. So Mrs H couldn’t leave it as a legacy for their child if she died.

But whilst I appreciate death benefits are important to consumers and Mr H might have thought it was a good idea to transfer his DB scheme to a personal pension because of this, the priority here was to advise Mr H about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don’t think IFM explored to what extent Mr H was prepared to accept a lower retirement income in exchange for higher death benefits.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr H was married and the PPF would have paid Mrs H 50% of his yearly pension entitlement if he died before her. Also, if Mr H was unfortunate enough to die while his son was still in full-time education, then the PPF would also pay a dependents’ pension. I don’t think IFM made the value of these benefits clear enough to Mr H. These were guaranteed and escalated they were not dependent on investment performance, whereas the sum remaining on death in a personal pension was. And there may not have been a large sum left in the personal pension if Mr H lived a long life, the fund performed poorly of if he took large sums from it early in in his retirement. In any event, IFM should not have encouraged Mr H to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

Further, I'm aware that Mr H had death in service cover from his employer. So that would have paid a considerable lump sum in the event he died while still working for his employer. But, if he wanted to leave a legacy for his family, which didn’t depend on his employment, investment returns or how much of his pension fund remained on his death, I think IFM should’ve instead explored life insurance. I appreciate that life insurance can be expensive. So, the starting point ought to have been for IFM to ask Mr H how much he would ideally like to leave to his family, and this could’ve been explored on a whole of life or term assurance basis. But there's little evidence it did so.

Overall, I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr H. And I don't think that insurance was properly explored as an alternative.

Summary

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

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

So, I don't think it was in Mr H's best interests for him to transfer his DB funds to a personal pension. So, I think IFM should have advised Mr H to allow his pension to move to the PPF.

Of course, I have to consider whether Mr H would have gone ahead with the transfer anyway if it wasn't for IFM's advice. And, after thinking about this carefully, I'm not persuaded he would have done so. I accept that Mr H most likely entered into the advice process with an idea he didn't want his pension to enter the PPF. But he was an inexperienced investor with a low attitude to risk. But he was putting his funds at unnecessary risk by transferring. And his DB pension accounted for a significant portion of his retirement provision at the time. So, if IFM had given him clear advice against transferring his safeguarded benefits, explaining why it wasn't in his best interests and that he would likely be worse off as a result of doing so, I think he would have accepted that advice.

It follows that I don't think IFM's advice to Mr H to transfer out of his DB scheme was suitable for him. And I think it should have advised him to stay with the BSPS even if it was moving to the PPF as those benefits on early retirement where more beneficial than the existing scheme. So, I think IFM should compensate Mr H for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Also, as I think that learning that he might have unnecessarily put his pension funds at risk was a source of distress and inconvenience for Mr H, I think IFM should also pay him £300 to address that

Putting things right

A fair and reasonable outcome would be for the IFM to put Mr H, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr H would have most likely remained in the occupational pension scheme and moved with it to the PPF 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 H and our Service upon completion of the calculation together with supporting evidence of what IFM based the inputs into the calculator on.

For clarity, Mr H had initial plans to retire at age 55 but he has now deferred that until age 57. So, compensation should be based on him taking benefits at that age.

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 regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr H'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 H redress as a cash lump sum payment,
- explain to Mr H 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 H receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr H accepts IFM's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr H 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 H's end of year tax position.

Redress paid to Mr H 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 H'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.

IFM should also pay Mr H £300 to address his distress and inconvenience.

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 IFM pays the balance.

My final decision

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

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Inspirational Financial Management Ltd pays Mr H the balance.

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

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 19 October 2023.

Joe Scott
Ombudsman