DRN-3661432

The complaint

Mrs S complains about the advice given by The Insurance Partnership Financial Services Limited ('TIPFS') to transfer the benefits from her defined-benefit ('DB') occupational pension scheme to a personal pension. She says the advice was unsuitable and believes this has caused a financial loss.

Mrs S is being represented by a third party but for ease of reading this decision I'll largely refer to representations as being made by Mrs S.

What happened

Mrs S' representatives have said she was cold called to discuss her pension.

TIPFS says Mrs S was introduced to it by another business. It says Mrs S was in touch with this other business from late 2016 and she had indicated she was interested in accessing benefits from her DB scheme pension when she turned 55. But while the other business could advise on annuities, it didn't have the required permissions from the regulator to provide advice in relation to the potentially transferring a DB scheme. So, it put Mrs S in touch with TIPFS.

I haven't seen anything confirming how contact with the other business first began. But I've seen a copy of a fact find completed by the other business in January 2017, confirming discussions between it and Mrs S seem to have taken place before the matter was referred to TIPFS.

The fact find recorded that Mrs S was 54, married and that both she and her husband were employed (with Mr S also receiving an additional income from a pension already in payment). It recorded that they owned their own home with a small mortgage remaining of approximately £4,000 and had another loan for about £9,000. It also said that they had approximately £35,000 as joint savings. This fact find recorded that Mrs S didn't feel the pension she'd receive from her DB scheme was particularly high and she was interested in taking a full 25% of the transfer value as tax-free cash ('TFC'), so was considering a transfer. It did note though that, in respect of retirement income, Mrs S indicated she wanted guarantees.

TIPFS says Mrs S was then referred to it, and a copy of the fact find was also shared with it. I've seen copies of several TIPFS headed documents which were then completed, all dated 2 February 2017 and signed by Mrs S, expanding on the fact finding.

A ‘Retirement Options Fact Find’ was filled out. This reiterated Mrs S’ circumstances. And an option was ticked to say that Mrs S had not yet retired but was considering drawing some benefits from her pension fund. It was again noted that she had savings (described as an emergency cash fund), but the value was this time said to be only £10,000. It said, in Mrs S’ own words, that she was interested in taking TFC *“To repay a car loan, clear an outstanding mortgage and to extend our house to have a kitchen, breakfast room.”* And Mrs S said a mortgage had been ruled out as an alternative source of funds because of the increase in costs this would bring and because her and Mr S’ age would impact their ability to obtain one. Options were also ticked and selected from a list indicating she had no immediate need for income, wanted to be able to vary her income in retirement and wanted her dependents to receive as much money as possible if she died.

A ‘Pension Transfer Attitude Questionnaire’ was also completed, which expanded on Mrs S’ preferences. This noted, again on occasion in her own words, she was hoping to access TFC at 55 but keep working until age 60. And she was interested in maximising TFC and drawing an income when she wanted to, at a level she chose.

Finally, a ‘Risk Discussion Document’ was also completed, which said it was to determine if Mrs S had the necessary level of experience and knowledge to understand the risks involved. This said that Mrs S was aware the value of her pension could fluctuate and go down as well as up.

On 7 February 2017, TIPFS wrote to Mrs S, outlining its understanding of her circumstances and objectives – noting in addition to being married she had a son who was not financially dependent. It said that, if she transferred, she’d be accepting a level of investment risk that was currently borne by her DB scheme. It said she’d indicated she felt the benefits she could take at age 55 under the scheme didn’t meet her needs. But said, as her adviser, it urged her to be aware of the potential risks. Mrs S indicated she understood these risks.

On 24 February 2017, TIPFS advised Mrs S to transfer her pension benefits into a personal pension. It said that transferring would achieve Mrs S’ main objective of being able to access the maximum possible TFC at age 55, as the amount she could take (approximately £70,000) significantly exceeded what she could take under the DB scheme (approximately £35,600) by taking early retirement. She could also take TFC without having to begin taking a pension income and it’d provide her the flexibility she’d expressed an interest in - in terms of both how her pension income could eventually be drawn down and how any death benefits could be paid to her family.

The suitability report noted that it was unlikely that the critical yield required to purchase equivalent retirement benefits at age 60 (6.42% if TFC and a reduced pension was taken or 10.14% if a full pension was taken with no TFC) could be achieved in that time without taking more risk that Mrs S would be comfortable with. But this was based on her then purchasing an annuity giving her a set income and the funds no longer being invested. So, as Mrs S expected to draw her pension flexibly, rather than take a guaranteed income, and keep the funds invested beyond age 60, there was additional time for growth to be achieved. And TIPFS thought the growth she needed to achieve up to and beyond age 60, to allow her to draw an equivalent income to the DB scheme until well beyond her life expectancy was achievable. TIPFS recommended a specific pension with the new provider which it said was in line with Mrs S’ attitude to risk, which had been established as being ‘cautious to moderate’.

I understand the transfer went ahead in March 2017 and Mrs S took the maximum available TFC (just over £70,000).

Mrs S complained in 2020 to TIPFS about the suitability of the transfer advice. She says she was persuaded to transfer because TIPFS said the pension fund would grow at a rate in excess of any growth that would occur in her DB scheme. But she felt TIPFS hadn't correctly understood her circumstances, including her attitude to risk, capacity for loss and investment experience. And she also thought TIPFS had recommended investments that were not suitable for her, and that should not have been promoted to her.

TIPFS didn't uphold Mrs S' complaint. It said Mrs S was referred to it after speaking to another company about taking benefits from her DB scheme pension at age 55. So, she had been looking at taking benefits before any discussion took place. It said she'd explained she was a member of, and still contributing to another DB scheme, her husband was also still contributing to another pension as well as receiving a pension income already and they were both entitled to a full state pension. So, her retirement income needs would be met by her other provisions, and she had capacity to accept some loss. TIPFS said her objective had been to release the maximum possible TFC. And it said it had been clear in its communication with her she may receive a lower pension as a result of the transfer and that Mrs S had acknowledged these risks. So overall, it felt the advice to transfer was suitable.

On the subject of the investments, it said the recommended personal pension was a standard pension plan, so it felt it had been correct to recommend this and disagreed that there were restrictions in relation to its promotion.

Mrs S referred her complaint to our service. An investigator upheld the complaint and required TIPFS to pay compensation. In summary, she felt Mrs S was always likely to receive a lower pension income in retirement as a result of transferring. She didn't think Mrs S had a genuine need for TFC. She also didn't think flexibility was a genuine requirement. Nor did she think it was in Mrs S' interests to transfer just to achieve alternative death benefits.

TIPFS indicated it disagreed. As TIPFS didn't accept the investigator's view, the complaint has been referred to me to make a final decision.

What I've decided – and why

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

I've taken into account relevant law and regulations, 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'). 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 TIPFS' actions here.

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

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

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

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

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

The 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, TIPFS should have only considered a transfer if it could clearly demonstrate that the transfer was in Mrs S' best interests. And having looked at all the evidence available, I'm not satisfied it was in her best interests.

Financial viability

Mrs S' representative says she was advised to transfer because she was told that she'd be better off as a result. But the information I've seen doesn't support this.

The suitability report included a section detailing the existing benefits Mrs S was entitled to under the DB scheme. This said it was estimated that, at the normal scheme retirement age of 60, Mrs S could either take a full annual pension starting at £10,786 or TFC of £48,035 and a reduced annual pension starting at £8,117. The annual pensions would continue to escalate in retirement but would also incur a reduction of approximately £912 when Mrs S reached state retirement age as a 'bridging pension' portion of her benefits would cease.

If Mrs S chose to retire and take her DB scheme benefits at age 55, it was estimated she'd be entitled to a full starting pension of £7,121 per year or TFC of £35,608 and a reduced starting pension of £5,480. These would again escalate in retirement but be reduced somewhat when the 'bridging pension' ceased.

TIPFS also referred to the critical yield - the rate at which a new pension arrangement would need to grow by each year to allow Mrs S to purchase equivalent benefits to those provided by her DB scheme at retirement. It said if Mrs S took a full pension at age 60, the critical yield was 10.14%. And if she took TFC and a reduced pension at 60, the critical yield was 6.42%. And TIPFS said it felt even the lower of these was *"not likely to be achievable without requiring you to take a higher degree of investment risk than you are comfortable with".*

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, I consider they provide a useful indication of what growth rates would have been considered reasonably achievable when the advice was given in this case. The discount rate published at the time of the advice was 3.1% per year for 5 full years to retirement, as in this case.

For further comparison, the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

I've taken this into account, along with the composition of assets in the discount rate, Mrs S' 'cautions to moderate' attitude to risk and also the term to retirement. And I think TIPFS was correct that the critical yield appears unlikely to have been achievable investing in line with Mrs S' attitude to risk. And as a result, she was likely to receive benefits of a materially lower overall value than the occupational scheme at retirement.

The DB scheme benefits were guaranteed. So, if Mrs S retired when she turned 55 a couple of months after the advice, she'd receive a guaranteed income. I can see that TIPFS obtained quotations to see what level of annuity, which would replicate the guaranteed income, Mrs S could purchase by transferring and using the cash equivalent transfer value ('CETV') of her DB scheme to buy an annuity on the open market. The quotations noted that if she took the same level of TFC as she was estimated to be entitled to under the DB scheme at age 55, an annuity with escalating income and spouse's pension – matching the scheme benefits – would provide a starting income of £3,995.88. Which was obviously significantly less than the DB scheme was estimated to provide. Which TIPFS again acknowledged in the suitability report as it said the annuity *"represents a significant reduction in benefits"*.

TIPFS has provided our service with some income modeller calculations, projecting what level of income Mrs S may be able to take on a flexible drawdown basis. One of these suggested that if a consistent return of 3% was achieved each year, Mrs S would be able to draw benefits equivalent to that which she would've been due under the DB scheme at age 55 (TFC and a reduced but escalating pension) until after her average life expectancy. And it said in the suitability report it believed this was achievable. But achieving that rate of return was not guaranteed. And there would be little point in Mrs S giving up the guarantees available to her through a DB scheme only to achieve the same level of benefits while exposing her fund to additional risk.

Other retirement modellers have also been provided to us indicating that, if Mrs S took 25% of the fund as TFC at age 55, differing levels of fixed annual income could also be achieved until after her life expectancy. And those fixed incomes modelled were in excess of the reduced pension she'd be entitled to under the DB scheme at age 60 if she took TFC (and again the TFC under the DB scheme was less than she could take through transferring). But those income levels were fixed, so would fall in real terms when taking into account inflation. Whereas the income payable under the DB scheme would continue to escalate. Those models were also based on achieving consistent returns of 5% or above. And I don't think, based on Mrs S attitude to risk and the rates I've mentioned above that was likely.

Overall, I'm satisfied that transferring was always likely to result in Mrs S achieving lower overall retirement benefits than she'd have been due under the DB scheme. And from a financial viability perspective therefore, transferring doesn't seem to have been in her best interests.

But, given the statements it made in the suitability report that I've referenced above, I don't think TIPFS suggested otherwise when providing advice. Rather it appears to have acknowledged this was likely, but it thought there were other considerations which meant a transfer was suitable, despite it providing overall lower benefits. I've considered these below.

Flexibility and income needs

TIPFS says that Mrs S wanted to maximise the level of TFC she could take and also wanted flexibility in how her pension benefits could subsequently be drawn. And these were some of the key drivers behind its advice. I would start by saying though, TIPFS role wasn't just to recommend a course of action that achieved what Mrs S might've believed she wanted. Its role was to understand her needs and advise her on what was in her best interests.

I’m satisfied that Mrs S had thought about accessing TFC from her DB scheme, before speaking to TIPFS. She and her representatives have maintained she was cold called and offered advice. But I’ve seen evidence that she was in contact with another business before TIPFS. That other business couldn’t provide advice on DB transfers. And the matter was referred to TIPFS. So, I’m satisfied the contact with TIPFS was not unprompted.

In the fact find Mrs S completed with that other business, before speaking to TIPFS, it was recorded that she was thinking about accessing 25% of the fund as TFC. And, as I mentioned above, she seems to have restated this during fact finding when taking advice from TIPFS. So, I’m satisfied that this was something Mrs S was thinking about.

That being said, I don’t think TIPFS did enough to establish whether this was a genuine *need*. I can see it was recorded that the purpose of taking TFC was to repay the small outstanding balance that remained on Mrs S’ mortgage, around £4,000, as well as another loan of £9,000. Mrs S has disputed that there was an outstanding mortgage balance. But given the information that was recorded at the time, which she declared was correct, I think it was reasonable for TIPFS to believe there was a mortgage balance that was to be repaid.

I haven’t though seen anything to suggest that clearing these debts was required or that Mrs S was behind with payments towards them. The information recorded indicated her household income comfortably exceeded outgoings. So, she seems to have been in a position to meet the required repayments. It was also recorded that Mrs S had savings in place. The amount recorded differs – with the initial fact find with the other business indicating these stood at £35,000 but the TIPFS fact find saying £10,000. But either way, this would’ve been enough to clear the majority of the outstanding balances had there been a genuine need to do so. So, it seems that clearing the debt wasn’t a necessity at the time and that this was either a rather generic reason for wanting access to TFC or at best a ‘nice to have’.

Upgrading a car and completing some home renovations were also noted as purposes for requiring access to TFC. But there is nothing recorded in any of the documents to show how much money was required to address those other purposes. And Mrs S has said that no home renovations were completed. On balance, I think those purposes were mentioned during the advice process – not least as they were recorded as being things TFC was going to be used for, in Mrs S’ own words. But they again are fairly generic reasons. And without there being evidence that TIPFS had made further enquiries about these purposes, in particular why they were urgent or how much was needed, again I don’t think that I can say these were a genuine *need* at the time.

And I don’t think I can say therefore that transferring to release a larger amount of TFC was necessary. The suitability report said that Mrs S had told TIPFS taking benefits early under the DB scheme would not have met all of her objectives. But the reasons listed for this didn’t include that the level of TFC was not enough. Rather it was just stated that she’d receive less TFC under the DB scheme. While Mrs S may have indicated a preference to take the higher amount of TFC available by transferring, I don’t think I can say she had a genuine need to do so. And, given that the primary purpose of a pension is to provide for the holder’s income needs in retirement, and transferring was likely to mean Mrs S would receive lower pension benefits, I don’t think recommending a transfer for this purpose was in her interests.

On the subject of flexibility, there is a little bit of contradiction in the documents I’ve seen. The initial fact find with the other business said Mrs S wanted guarantees about her pension income. But the documents later completed with TIPFS said she wanted flexibility. On balance, I think Mrs S probably, by the time of speaking to TIPFS did express an interest in flexibility. But again, I don’t think TIPFS did enough to establish that this was a genuine need.

I can't see that TIPFS asked any questions about how much income Mrs S expected to need in retirement. It was noted she was considering taking TFC at age 55 and continue working to age 60. But it wasn't recorded what her income needs would be at that point. It was noted that Mrs S had some savings, was a member of another DB scheme and would be receiving state pension. But there wasn't anything recorded about the benefits she'd be entitled to under the other DB scheme. And the information about the available savings was inconsistent. It was noted that Mr S also had other pension provisions. But there was nothing recorded about how much combined income they were going to need in retirement and whether their existing provisions, as they were before the transfer, would meet or fall short of that need. Or anything that shows flexibility in order to access varying amounts from the DB scheme that it was advising on, was needed in order to meet those income needs.

TIPFS says Mrs S indicated she felt her other provisions would provide what she needed and this meant she was able to take a risk with this DB scheme. But without it having undertaken analysis to support this, I don't think it was reasonable for TIPFS to say that doing so was in her interests. And one of the statements Mrs S agreed to during the fact finding was that this DB scheme made up the majority of her retirement provisions. And, as I've already established, Mrs S was likely to receive lower pension benefits as a result of transferring. So, as a genuine need to achieve flexibility wasn't established, I don't think a transfer to achieve this was in Mrs S' best interests.

Death benefits

Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer through a personal pension was likely an attractive feature to Mrs S. But whilst I appreciate death benefits are important to consumers, and Mrs S might have thought it was a good idea to transfer her DB scheme to a personal pension because of this, the priority here was to advise Mrs S about what was best for her retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think TIPFS adequately explored to what extent Mrs S 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. Mrs S was married and so the spouse's pension provided by the DB scheme would've been useful to her spouse if Mrs S predeceased him. This benefit was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was.

The lump sum the personal pension would provide would've also been reduced by any income Mrs S drew in her lifetime. The CETV may have appealed to her as a lump sum, but this was unlikely to be the legacy left through a personal pension. I haven't seen anything suggesting Mrs S wasn't in good health, so there wasn't anything to suggest she was unlikely to reach at least her average life expectancy. The income modellers provided by TIPFS indicated that the remaining pension balance was likely to have been reduced by that point – in some of the scenarios significantly so. And that is before even accounting for the fact that most of those models appear largely to have relied on projected growth that I don't think was entirely realistic. Therefore, it is more likely than not that the value of Mrs S' pension would've been significantly reduced by the time it was passed on. So, it was unlikely to provide the legacy Mrs S might have thought it would. In any event, TIPFS should not have encouraged Mrs S to prioritise the potential for higher death benefits through a personal pension over her security in retirement.

And if Mrs S genuinely wanted to leave a legacy for her family, which didn't depend on investment returns or how much of her pension fund remained on her death, then life insurance could've been explored as an alternative. But I can't see that it was.

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

Suitability of investments

Mrs S' representatives have said that the recommended investments were unsuitable for her. This seems to be on the basis of her circumstances at the time meaning she shouldn't have been considered suitable for a non-standard investment.

As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mrs S, it follows that to a large extent I don't need to consider the suitability of the investment recommendation. This is because Mrs S should have been advised to remain in the DB scheme and so the investments wouldn't have arisen if suitable advice had been given.

But I would just say that TIPFS didn't recommend a non-standard investment. It recommended a standard personal pension product – a managed fund with a major pension provider.

Summary

I don't doubt that the flexibility, control and potential for higher death benefits on offer through a personal pension would have sounded like attractive features to Mrs S. But again, TIPFS wasn't there to just transact what Mrs S might have thought she wanted. The adviser's role was to really understand what Mrs S needed and recommend what was in her best interests.

Ultimately, I don't think the advice given to Mrs S was suitable. She was giving up a guaranteed, risk-free and increasing income. By transferring, Mrs S was likely to obtain lower retirement benefits and in my view, there were no other particular reasons which would justify a transfer and outweigh this. While I'm satisfied Mrs S likely expressed an interest in accessing more TFC, I don't think she had a genuine need to do so. And so, I don't think this, the added flexibility, which I don't think TIPFS did enough to determine was necessary either, or the alternative death benefits was worth giving up the guarantees associated with her DB scheme for.

So, I think TIPFS should've advised Mrs S to remain in their DB scheme.

Of course, I have to consider whether Mrs S would've gone ahead anyway, against TIPFS's advice.

I've considered this carefully. As I've said, I'm satisfied that Mrs S was referred to TIPFS having already had correspondence with another business about accessing her pension benefits. And I don't doubt that at the point of talking to TIPFS she was considering doing so, not least because she was about to turn 55 and Mr S, who was a couple of years older than her, was already drawing an income from one of his pensions. So, Mrs S was likely to have been aware that accessing her benefits was potentially an option.

I'm also satisfied that Mrs S had expressed an interested in potentially accessing the greater levels of TFC available through transferring. The difference in the amount of TFC available to Mrs S at age 55 depending on the different options was significant. Under the DB scheme she could access an estimated £35,608. But based on the CETV of her pension and taking 25% of this, by transferring she could take almost £70,000 – nearly double the amount. And, based on the fact finds from both TIPFS and the independent separate business Mrs S had spoken to first, it seems that this amount appealed to her – as I think it would to most consumers.

But while those headline figures would've no doubt been something Mrs S thought about, I'm not persuaded that she would've insisted on transferring out of the DB scheme, against TIPFS' advice.

I accept that TIPFS set out the risks of transferring to Mrs S and she indicated she understood these. But ultimately it advised Mrs S to transfer her benefits, and I think she relied on that advice. While she'd indicated a broad understanding of risk principles during fact finding – that the value of the pension could fluctuate, I haven't seen anything to suggest Mrs S was an experienced investor. She had a 'cautious to moderate' attitude to risk, was near to retirement and needing to rely on her pension benefits and this DB scheme made up the majority of her pension provisions. I'm not persuaded that the appeal of a larger TFC sum would've meant she insisted on the transfer knowing that a professional adviser, whose expertise she had sought, didn't think it was suitable for her or in her best interests. I think TIPFS recommendation would've carried significant weight. So, if TIPFS had provided her with clear advice against transferring out of the DB scheme, explaining why it wasn't in her best interests, I think she would've accepted that advice. And, I don't think she would have insisted on transferring.

In light of the above, I think TIPFS should compensate Mrs S 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 Mrs S, as far as possible, into the position she would now be in but for TIPFS' unsuitable advice. I consider Mrs S would have most likely remained in her DB scheme if suitable advice had been given.

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and has set out its proposals in a consultation document - CP22/15-calculating redress for non-compliant pension transfer advice. The consultation closed on 27 September 2022 with any changes expected to be implemented in early 2023.

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

The FCA has said that it expects firms to continue to calculate and offer compensation to their customers using the existing guidance in FG 17/9 whilst the consultation takes place. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with any new rules and guidance that may come into force after the consultation has concluded.

We’ve previously asked Mrs S whether she preferred any redress to be calculated now in line with current guidance or wait for any new guidance / rules to be published.

Mrs S would like to wait for the outcome of the consultation before her complaint is settled. I consider it’s fair that TIPFS waits for the outcome of the consultation to settle this complaint.

The basic objective of the proposed amendments to the redress methodology still remains to put a consumer, as far as possible, into the position they would be in if the business had advised them to remain in the DB scheme. Having reviewed the FCA’s consultation and its proposed updates to the DB transfer redress methodology, I’m satisfied that the proposed changes will, if ultimately implemented, still reflect a fair way to compensate Mrs S.

I therefore don’t consider it necessary for me to wait for any new guidance / rules to come into effect to determine this complaint.

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

For clarity, Mrs S retired at age 58. So, compensation should be based on her taking benefits at that age.

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

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mrs S’ pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn’t be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn’t possible or has protection or allowance implications, it should be paid directly to Mrs S as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to her likely income tax rate in retirement – presumed to be 20%. So, making a notional deduction of 15% overall from the loss adequately reflects this.

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

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

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

My final decision

Determination and money award: I uphold this complaint and require The Insurance Partnership Financial Services Limited to pay Mrs S the compensation amount as set out in the steps above, up to a maximum of £160,000.

Where the compensation amount does not exceed £160,000, I would additionally require The Insurance Partnership Financial Services Limited to pay Mrs S any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I would only require The Insurance Partnership Financial Services Limited to pay Mrs S any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that The Insurance Partnership Financial Services Limited pays Mrs S the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mrs S.

If Mrs S accepts this decision, the money award becomes binding on The Insurance Partnership Financial Services Limited.

My recommendation would not be binding. Further, it's unlikely that Mrs S can accept my decision and go to court to ask for the balance. Mrs S 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 Mrs S to accept or reject my decision before 22 December 2022.

Ben Stoker
Ombudsman