DRN-3665867

The complaint

Mr J complains about the advice Inspirational Financial Management Ltd ('IFM') gave to transfer the benefits he held in the British Steel Pension Scheme ('BSPS') to a personal pension. The BSPS was a defined benefit ('DB') occupational pension scheme. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

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

In July 2017 Mr J received a transfer value quotation ('TVQ') from the trustees of the BSPS. This summarised the benefits Mr J had accrued in the BSPS at the date of the quotation. It noted that Mr J had accrued 20 years and 4 months of pensionable service and as of May 2016 his starting pension at age 65 was said to be £20,157.46 per year. But by the point of the quotation, this had been revalued to £20,680.20 per year. And it would continue to be revalued until retirement. The TVQ also gave the cash equivalent transfer value ('CETV') of Mr J's BSPS pension benefits, which was £515,451.51.

Also in July 2017, Mr J spoke to a business, which I'll call 'Firm F', as he wanted advice relating to his BSPS benefits. Firm F didn't have the necessary permissions to advise Mr J about a potential transfer from his DB scheme. So, they referred him to IFM.

IFM wrote to Mr J to introduce itself and asked him to complete a fact-find, that would be used when discussing his pension, to provide it information about his circumstances and objectives. Mr J was 47, employed, in good health and married with two children over the age of 18. He and Mrs J owned their own home with a remaining mortgage of approximately £26,000 that was due to be repaid within the next couple of years. They also received some income from a rental property they owned. In total their incomings were noted as exceeding their outgoings by approximately £750 - with that figure due to grow significantly when the mortgage was repaid and the monthly payments of around £1,000 ceased.

In addition to the benefits held in the BSPS, Mr J was also a member of a new group personal pension that had been set up by his employer. He and his employer were noted as making combined contributions to this pension equivalent to 12% of his salary. The BSPS benefits though made up the majority of his retirement provisions at the time of the advice.

The fact find noted that Mr J hoped to retire at age 55 and, in the event he took it, take tax-free cash ('TFC') from his pension at that point. But the fact-find didn't note what level of income he expected to need at that point, nor did it identify any capital expenditure Mr J expected to need TFC for. And indeed, in answer to one of the questions asked, Mr J ticked to say that while he'd like the maximum TFC possible at retirement he also agreed he was too young to make a decision about this. Mr J also indicated that he was happy to accept a lower pension if he retired early and said that, if his pension and future savings didn't meet his retirement goals, he'd amend his goals rather than taking more risks. He did note that being able to take his benefits as and when required was one of the reasons he was considering transferring. And IFM also recorded that Mr J was keen to have control over his pension and was concerned at potentially moving to the PPF.

The questionnaire also included questions about Mr J's attitude to risk. To which he answered, amongst other things, that the degree of risk he was willing to take in his financial affairs generally was extremely low, he was only looking to take small risks in the future and he was willing to forego larger gains in favour of security. IFM initially recorded in its notes that Mr J's attitude to risk was 'cautious to conservative'.

Mr J says, while he'd answered some of the questions in the fact find before meeting with IFM, it was only fully completed when he met with its adviser. Which is supported by the fact-find having been dated 15 August 2017, when I understand is when the meeting took place. Even though the fact find appears to have only been provided to IFM at that stage it appears that some application forms to enable a transfer to take place were also signed at that meeting.

In the meantime, on 11 August 2017, Mr J's employer confirmed the terms of the RAA – which had been agreed in May 2017 – had been signed. This announcement included confirmation that agreement had also been reached about the sponsorship, by Mr J's employer, of the BSPS2.

On 24 August 2017, IFM sent Mr J a suitability report, advising him to transfer his pension benefits into a personal pension and invest across two managed funds. The report said Mr J required flexibility to control and tailor the frequency and amount of income he received from his pension fund in retirement to suit his needs. It said Mr J also wanted to ensure he could retire when he wanted and didn't want to take the risk of having restrictions in place when the BSPS entered the PPF or in the BSPS2. And it said Mr J was prepared to accept more risk in return for greater flexibility over when and how benefits were withdrawn from his pension fund. So, it felt a transfer was suitable as it would achieve these aims. And IFM felt the managed funds were in line with Mr J's 'conservative' attitude to risk.

Mr J complained in 2021 to IFM. He said he thought the advice was unsuitable and it should not have recommended that he transfer.

IFM didn't uphold Mr J's complaint. It said Mr J had said he wished for flexibility and the uncertainty around the scheme at the time gave him good cause to consider a transfer. And given his retirement objectives and the level of income he wished to access, IFM thought the advice was appropriate.

Mr J referred his complaint to our service. He said retiring at age 55 was an aspiration, as he said was the case amongst all of his colleagues. But his plans around this were by no means set in stone and, if this wasn't genuinely possible, he'd have continued to work. He also clarified that the rental property he was receiving an income from was owned jointly with family members and was subject to a mortgage, which he felt showed the lack of attention to detail by IFM.

An investigator considered the complaint and thought it should be upheld and that IFM should compensate Mr J for any loss the DB transfer had led to as well as pay £300 for the distress caused. In summary, she didn't think Mr J was likely to be any better off as a result of transferring but doing so introduced significant additional risk. And she didn't think Mr J had a genuine need for flexibility, control or alternative death benefits – so there was no reason that meant transferring was in his interests. She thought Mr J should've been advised not to transfer and that he would instead have ultimately moved to the BSPS2.

IFM disagreed. It said that it was more that an aspiration for Mr J to retire at age 55 and that, although this wasn't documented on the file, evidence hadn't been provided to dispute this. IFM said Mr J's income requirement was estimated to be between £2,400 and £2,900 (net) per month in retirement – significantly more than the DB scheme could've provided and so only by transferring could he realistically afford to retire early. It said the purpose of the transfer was not to increase benefits but to allow Mr J to retire early. And it felt providing alternative death benefits was appropriate. So IFM still thought the transfer was suitable and that the advice was appropriate given the time pressure on Mr J to make a choice.

The investigator wasn't persuaded to change their opinion. She still felt it hadn't been established that retiring early was more than an aspiration and noted Mr J had indicated in the fact find he felt he was too young at the time of the advice to make a decision about his retirement benefits. And she noted that the BSPS2 would've allowed a transfer closer to retirement, had there later been a genuine need to do so, so he didn't have to transfer at the time of the advice. Overall, she still considered the transfer wasn't in Mr J's best interests.

As IFM did not agree with the Investigator's opinion the complaint was referred to me to make a final decision.

What I've decided – and why

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

I've taken into account relevant law and regulations, 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 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.

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

Financial viability

Before the fact find was signed on 15 August 2017, there had been a significant update about what was happening with the BSPS and the BSPS2 – specifically that the RAA had been signed, this was expected to take effect in early September 2017 and agreement had been reached about the sponsorship of the BSPS2. Despite this though IFM proceeded with advice, without really accounting for this development. It made no suggestion to Mr J to potentially wait for further information and there was no analysis of the benefits the BSPS2 might provide.

IFM's role was to look at and advise Mr J about what was in his best interests. And in my view, in order to assess what was in Mr J's best interests and give him enough information to make a fully informed decision, I think IFM should have told Mr J to defer making a decision on the transfer until further details of the BSPS2 were known.

Transferring out of a DB scheme is a one-off event. Once transferred there's no going back, the benefits of the DB scheme are usually lost forever. The announcement indicated that Mr J would have another option available to him. Waiting would've allowed IFM to carry out an analysis of the BSPS2 benefits, and properly compare these to the alternatives, and base its advice on this. Without doing this, IFM was acting on information which it knew to be limited. And equally concerning is that IFM arranged for Mr J to sign forms to enable a transfer on 15 August 2017, before the fact find had been handed over or the suitability report had been provided and despite the announcement made shortly prior to this. So, it is difficult to argue that IFM could properly assess whether a transfer was in Mr J's best interests.

When giving advice about the potential transfer of DB scheme benefits, the regulator required IFM to instruct a transfer value analysis ('TVAS'). This was to compare the value of the existing benefit with what Mr J may receive by transferring and include the calculation of the critical yield - how much Mr J's pension fund would need to grow by each year if invested in a personal pension so that he could purchase the same benefits as his DB scheme at retirement. In the suitability report IFM played down the significance of this analysis saying TVAS reports "*arguably add no value to the process*" and that the results are *"largely academic*". But again, they are a requirement set by the regulator. And I don't think it was reasonable to undermine the significance of understanding the value of the benefits that would be given up by transferring, which I think is what was implied.

Because IFM didn't account for the updates about the BSPS2, the TVAS was based on the benefits available under the BSPS. Even though Mr J 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. Again, I think IFM ought to have waited until further details of the BSPS2 were made available, in order to run the relevant analysis and include this in its advice.

The TVAS I've been provided did include information about the benefits the PPF might provide at age 65. But only the full pension amount. There was no information about what level of TFC and reduced pension Mr J could potentially take, and no critical yield calculated for that scenario. And, more importantly, there was no comparison of the benefits he'd have been entitled to, under either the BSPS, BSPS2 or PPF, from age 55 and no critical yields calculated. Which, given that IFM relied on this as being a key objective, I think ought to have been analysed and explained to Mr J.

Because the TVAS was only instructed on a very limited basis, I think there are issues with how useful a comparison it was here. But not, as IFM said, because it is “largely academic” but because of how it was instructed. Nevertheless, I’ve thought about the analysis that was carried out. And I don’t think this supports that a transfer was in Mr J’s best interests.

The critical yield required to match the benefits Mr J would’ve been to be entitled to under the PPF if he retired at 65 and took a full pension, was estimated to be 3.6%. And to match the benefits the existing BSPS was due to provide in the same scenario, the critical yield was said to be 6.4%.

The critical yield applicable to the BSPS2 benefits wasn’t calculated – although again I think IFM ought to have waited and analysed this before providing its advice. The lower annual increases under the BSPS2 would’ve likely decreased the critical yields somewhat in comparison to the BSPS. But I still think they would’ve likely been higher than those reflecting the PPF benefits and are likely to have been closer to those of the BSPS benefits, particularly at age 65.

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 relevant discount rate at the time the advice was given was 4.4% per year for 17 full years to retirement, as would be the case had Mr J retired at age 65. 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%.

In the adviser’s handwritten notes, they noted that Mr J’s attitude to risk was ‘cautions to conservative’. But in the suitability report IFM said it was ‘conservative’ which, according to the information provided, was slightly less risk averse than a ‘cautious’ consumer. I’m not sure the answers in the fact-find warranted amending Mr J’s attitude to risk in this way. And if anything, they hint at him being more ‘cautious’ than ‘conservative’. But I don’t think it makes a great deal of difference here.

I’ve taken into account the discount rate, regulator’s projections and critical yields, along with the composition of assets in the discount rate, Mr J’s attitude to risk, the term to retirement and what I’ve said about the likely critical yield of the BSPS2. There would be little point in Mr J 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 I think he was likely to receive benefits of a lower overall value than the BSPS2 would’ve provided at age 65, as a result of investing in line with that attitude to risk.

The discount rate exceeded the critical yield to match the full pension the PPF could provide at age 65, suggesting this could’ve been achievable. But bearing in mind Mr J’s at best ‘conservative’ attitude to risk and the regulators projection rates, I think it’s more likely that the consistent rate of return he was likely to achieve, matching his risk profile, would be closer to the lower projection rate. And so, I think at best he may’ve been able to match the benefits the PPF would provide at age 65, rather than exceed them. And again, I don’t think it was worthwhile him taking on significant additional risk to do so.

IFM has referred to the estimated growth rates that the pension provider forecast for the managed funds it recommended. And these do exceed the critical yield to match the full pension the PPF might've provided at age 65. But as IFM will know, past performance is no guarantee for future performance and so I consider the discount rates and the regulator's standard projections to be more realistic in this regard in the long term rather than projecting historic returns forward, particularly over such a long period of time.

So, overall I don't think the analysis conducted by IFM supported that, from a financial viability point of view, a transfer was in Mr J's interests.

And again, in any event, IFM's advice was not based on Mr J retiring at age 65. It was based on him taking benefits at 55. IFM didn't calculate the relevant critical yields for taking benefits either under the BSPS, BSPS2 or PPF at age 55. But from experience I think it is fair to say that those yields were likely to be higher than for retiring at 65. And, given the favourable terms the PPF incorporated for very early retirement, potentially significantly so, in the case of PPF benefits. The relevant discount rate at the time for 7 full years to retirement, which would've been the case if Mr J retired at 55, was also lower, at 3.4%. So, on balance, I think Mr J was also likely to obtain lower retirement benefits than the DB scheme, including the PPF, would've provided at age 55 as a result of transferring and investing in line with his attitude to risk.

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. And IFM has said that the transfer wasn't recommended here to improve benefits, but rather for other reasons. I've considered these below.

Flexibility and income needs

IFM says that Mr J wanted to retire at age 55 and that this was more than an aspiration. It acknowledged in response to the Investigator's opinion that the notes from the time don't make this clear. But has said that it hasn't been disproved with any evidence.

Mr J says that, while he would of course have been interested in retiring at age 55, had he been told that this wasn't likely to be achievable he would've accepted that. And he hadn't made a definitive decision about retiring at that age.

As IFM has acknowledged, the information from the point of sale doesn't, in my view, indicate that early retirement was more than an aspiration. And, I'd have expected it to be more definitive about this, if it were the case. And Mr J's testimony itself is evidence. And that disputes IFM's version of events. But I also think information from within the fact-find supports that no definitive decision had been made.

Mr J did select a statement from a pre-printed list set by IFM, in respect of potential early retirement, that said he anticipated early retirement and was happy to accept a lower pension. But to another question he selected an answer that he felt he was too young to make a decision about his retirement needs. It is true the question he gave this answer to referred to tax-free cash needs. But Mr J wasn't given the option to say he was too young to make a decision regarding early retirement – as this wasn't one of the pre-printed options he could choose from. So, I think the sentiment applied in relation to his retirement plans in general. And Mr J also selected, when asked what he'd do if he was told his pension fund and savings weren't enough to meet his goals, that he'd alter his goals rather than take investment risk. Which I think further supports that his objectives weren't set in stone.

I don't doubt Mr J was interested in retiring early if possible – I think most consumers would be when asked. But I don't think his thoughts or plans were definitive at the time of the advice – as he was at least 7 years from being able to make a decision about this. And the

BSPS2 and the PPF both allowed Mr J to take benefits early if he chose to do so. So, he didn't need to transfer in order to retire early.

IFM has said that it assumed Mr and Mrs J would need an income of between £2,400 and £2,900 per month in retirement. And this couldn't have been achieved through the DB scheme. But the first mention of this as a potential income requirement was in response to the complaint. There was nothing recorded in the documents from the time, including the suitability report, indicating that this was an objective or an assumption used or that the advice was based on this. Which I would've expected to see some evidence of, if this was something that was discussed. Rather this seems to have been provided as a justification now for the advice, rather than being a genuine consideration at the time.

There doesn't appear to have been a target retirement income recorded at the time. And bearing in mind that IFM said the transfer wasn't recommended on the basis of improving retirement benefits, I don't think I can reasonably Mr J needed to transfer to achieve a genuine income need.

IFM has said that Mr J was interested in and wanted flexibility in terms of how he could take his benefits. But IFM wasn't there to just transact what Mr J might've thought he wanted. And I don't think he had a need for flexibility when he transferred his DB scheme. Not least because his retirement plans and needs seem to have been uncertain. So, I don't think it was a suitable recommendation for Mr J to give up his guaranteed benefits when he did – particularly given he was always likely to receive benefits of a lower overall value by doing so. And if Mr J later had reason to transfer out of his DB scheme, I understand that this would've been allowed under the BSPS2. And he could've done so closer to retirement.

Death benefits

Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer through a personal pension was likely an attractive feature to Mr J. But whilst I appreciate death benefits are important to consumers, and Mr J 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 J about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement.

I also think the existing death benefits attached to the DB scheme were underplayed as they meant the pension would not "die with" Mr J as IFM suggested. Mr J was married and so the spouse's pension provided by the DB scheme would've been useful to his spouse if Mr J predeceased her. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was.

The sum remaining on death following a transfer, as well as being dependent on investment performance, would've also been reduced by any income Mr J drew in his lifetime. And he was recorded as being in good health. So, I think he was likely to have drawn an income for some time. IFM has suggested that due to his profession he didn't expect to live as long. But again, this wasn't recorded at the time of the advice.

IFM has also said that the spouse's pension was unlikely to be enough to meet Mrs J's income needs. Which is why the lump sum benefits available through a personal pension were desirable. But the group personal pension that Mr J was a member of was recorded as providing death in service benefits of six times his salary. And it would've also provided a lump sum in the event of his death equivalent to the value of the pot itself. And if Mr J didn't think this was sufficient and he was genuinely concerned and wanted to leave a further legacy, 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. Which I can't see that it did.

In any event, IFM should not have encouraged Mr J to prioritise the potential for alternative death benefits through a personal pension over his security in retirement. And 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 J.

Control or concerns over financial stability of the DB scheme

I think Mr J's desire for direct control over his pension benefits was overstated. Mr J 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 don't think that this was a genuine objective for Mr J – it was simply a consequence of transferring away from the DB scheme.

I think this objective was more linked to the uncertainty about the BSPS. I don't doubt Mr J, 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 the announcements in the weeks and months prior to the advice indicated he was going to need to make a choice about this – which I doubt is something he'd done or contemplated before. And he might've felt unequipped to do so. I also don't doubt Mr J had likely heard negative things about what could happen, including entry into the PPF. And it's quite possible he was leaning towards the decision to transfer because of his concerns. But that is why it was even more important for IFM to give Mr J an objective picture and recommend what was in his best interests.

As I've explained, I think IFM should have waited before confirming its advice so that the option of the BSPS2 could've been fully considered and explained. Prior to the advice being given there were updates regarding the BSPS and the BSPS2 that indicated it was progressing and appeared likely to be an option for customers in Mr J's position. So, the advice should've properly taken the benefits available to Mr J through the BSPS2 into account. Which, as I've said, it appears he was unlikely to improve upon by transferring. And I think this should've alleviated some of the concerns Mr J might've had 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 J that the scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr J through the PPF, while a reduction on what he'd have been due under the BSPS, was still guaranteed and not subject to investment risk – which given the answers in the fact find about his unwillingness to take risks seem like it would've been important to him. And he was unlikely to improve on the pension benefits the PPF would've provided by transferring out. So, I don't think that any concerns Mr J might've had about the PPF should've led to IFM recommending he transfer out of the DB scheme altogether.

Summary

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

Ultimately, I don't think the advice given to Mr J was suitable. His needs in retirement appear to have been unconfirmed. By transferring, he was giving up a guaranteed, risk-free and increasing income. And this action was irreversible. Mr J was also, in my view, always likely to obtain lower retirement benefits as a result of transferring. And I don't think there were any other reasons which justified the transfer and outweighed this. So, I don't think it was in Mr J's best interests for him to transfer his DB scheme to a personal pension. And I think IFM should've first recommended that he defer making a decision until further details of the BSPS2 were available and ultimately advised him against transferring.

Mr J was over 7 years from the age at which he said he might hope to retire. Although again I don't think retiring at that age was more than a 'nice to have'. So, while he indicated he was interested in retiring early I don't think he could say with certainty what his needs in retirement would likely be. So, 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. I say this because while it is true the PPF would've provided a more favourable reduction for very early retirement, because his plans were not confirmed, there was no guarantee the reduction he accepted would end up being offset by this more favourable reduction. And by opting into the BSPS2, Mr J would've retained the ability to transfer out of the scheme nearer to his retirement age if he needed to. The annual indexation of his pension when in payment was also more advantageous under the BSPS2. So, I think if IFM had correctly advised him against transferring Mr J would've ultimately opted into the BSPS2.

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

I've considered this carefully. Mr J had obtained a CETV before speaking to IFM. But I don't think this means his mind was already made up. Scheme members had been made aware of significant potential changes to the BSPS and it had been indicated that they'd have to make a choice about their pension. Obtaining a CETV allowed Mr J to make an informed choice. But I don't think this mean's he'd always have transferred.

I accept that IFM outlined risks of transferring to Mr J in the suitability report – albeit after application forms had already been signed. But providing information about risks isn't a substitute for suitable advice. And ultimately IFM advised Mr J to transfer his benefits, and I think he relied on that advice.

Ultimately Mr J was an inexperienced investor and this pension accounted for the majority of his retirement provision at the time. So, if IFM, a professional adviser he'd been referred to for expert advice, had provided him with clear advice against transferring, explaining why it wasn't in his best interests, I think he would've accepted that advice. And I'm not persuaded that Mr J's concerns about the consultation or the PPF, or the potential appeal of alternative death benefits, control or flexibility were so great that he would've insisted on the transfer knowing IFM didn't think it was suitable for him or in his best interests. And if IFM had explained that Mr J was always unlikely to exceed the guaranteed benefits available to him by transferring, I think that would've carried significant weight, particularly considering his recorded attitude to risk. So, I don't think he'd have gone against the advice.

In light of the above, I think IFM should compensate Mr J for the unsuitable advice. Mr J has suggested that IFM should be required to purchase him a policy guaranteeing the benefits that he gave up. But the regulator's defined benefits pension transfer redress methodology is designed to put him in the position to obtain the same benefits that were given up. So, I think using that methodology to determine compensation remains appropriate here.

Our Investigator recommended that IFM also pay Mr J £300 for the distress caused by the unsuitable advice. I don't doubt that Mr J 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 in respect of this is fair.

Putting things right

A fair and reasonable outcome would be for the business to put Mr J, as far as possible, into the position he would now be in but for IFM's unsuitable advice. I consider Mr J would have most likely opted to join the BSPS2, rather than transfer to a personal pension if he'd been given suitable advice. So, IFM should use the benefits offered by BSPS2 for comparison purposes.

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and set out its proposals in a consultation document - https://www.fca.org.uk/publication/consultation/cp22-15.pdf

In this consultation, the FCA 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.

A policy statement was published on 28 November 2022 which set out the new rules and guidance-https://www.fca.org.uk/publication/policy/ps22-13.pdf. The new rules will come into effect on 1 April 2023.

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 for the time being. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with the new rules and guidance.

We've previously asked Mr J whether he preferred any redress to be calculated now in line with current guidance or wait for the new guidance / rules to come into effect. Mr J indicated he was unsure and ultimately didn't inform us of a choice. So as set out previously I've assumed in this case he doesn't want to wait for the new guidance to come into effect.

I am satisfied that a calculation in line with FG17/9 remains appropriate and, if a loss is identified, will provide fair redress for Mr J.

IFM must therefore undertake a redress calculation in line with the regulator's pension review guidance as updated by the Financial Conduct Authority in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers.

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

This calculation should be carried out as at the date of my final decision and using the most recent financial assumptions at the date of that decision. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr J's acceptance of the decision.

IFM may wish to contact the Department for Work and Pensions (DWP) to obtain Mr J's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P). These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on Mr J's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr J'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 Mr J 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 his 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 payment resulting from all the steps above is the 'compensation amount'. This amount must where possible be paid to Mr J within 90 days of the date IFM receives notification of his acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes IFM to pay Mr J.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above - and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won't apply.

If the complaint hasn't been settled in full and final settlement by the time any new guidance or rules come into effect, I'd expect IFM to carry out a calculation in line with the updated rules and/or guidance in any event.

In addition, IFM should pay Mr J £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 £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

<u>Determination and money award</u>: I uphold this complaint and require Inspirational Financial Management Ltd to pay Mr J 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 Inspirational Financial Management Ltd to pay Mr J any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I would only require Inspirational Financial Management Ltd to pay Mr J any interest as set out above on the sum of £160,000.

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

If Mr J 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 J can accept my decision and go to court to ask for the balance. Mr J 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 J to accept or reject my decision before 3 March 2023.

Ben Stoker
Ombudsman