DRN-3666429

The complaint

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

Mr F began working for his employer in 1978 at the age of 17 and was a member of the BSPS DB scheme for 38 years and 9 months from August 1978 to the end of May 2016. After the DB scheme closed to new accruals in March 2017, Mr F joined his employer's Defined Contribution ('DC') scheme.

Mr F was introduced to IFM at the end of June 2017 by his financial adviser ('Firm E'). As Firm E didn't hold the relevant permission from the Financial Conduct Authority ('FCA') to advise on the transfer of his DB scheme, it told Mr F it was referring him to IFM to discuss his pension and retirement needs. At this point Mr F was aged 56, and his wife was 55, and he had been thinking about early retirement for a couple of years. In June 2016 he'd received a projection of his benefits from the DB scheme which he didn't take up. In July 2017 Mr F received a Cash Equivalent Transfer Value ('CETV') from the DB scheme of £558,100.04, valid for 3 months. The CETV was a significant increase from the CETV of £276,400 provided to Mr F when the scheme closed in 2016.

IFM completed a fact-find in early August 2017 to gather information about Mr F's circumstances and objectives. His circumstances at the time were noted as follows:

- He was married with two grown up children who were not living with him and his wife.
- He was employed as a team leader earning £38,673.
- Mrs F was a manageress earning £23,232.
- Their approximate monthly disposable income was £1,500.
- Their house was valued at £120,000 and had no mortgage.
- No other investments were recorded except for approximately £50,000 they had in an ISA.
- He was recorded as being a member of his employer's DC scheme, making contributions of £350 per month with employer contributions of £150 per month. The total fund value at the time of the advice was £4,000. Mrs F had a belonged to a DC scheme currently valued at £11,000 and a had a deferred DB pension with an annual income of £5,400 at age 65.

- Both Mr and Mrs F were both in good health and planned to do a lot of walking for the next 10 -15 years. They felt with the onset of older age their health might deteriorate.

IFM also carried out an assessment of Mr F's attitude to risk, which it deemed to be 'low'. It also thought his capacity for loss was such that he was able to accept the risk of transferring his pension given the size of the CETV and the potential investment timescale.

On 11 August 2017 IFM provided Mr F with its suitability report and advised him to transfer his pension benefits into a personal pension and invest the proceeds with a provider ('P') in with profits cautious and growth funds. The suitability report said the reasons for this recommendation were, in summary:

- To provide greater flexibility in retirement when drawing benefits.
- Mr F wanted to retire soon and questioned whether the pension offered by the BSPS scheme would be sufficient to allow him to do so.
- That Mr F doubted that the fixed, inflexible nature of the BSPS pension was best suited to his retirement needs and his wish to have control of his pension wealth. He thought he would need a larger income in the earlier years of his retirement which would decrease as he aged so he questioned whether the fixed nature of the BSPS scheme could deliver this.
- The ability to pass his pension fund on to his family in the event of his death.

Mr F accepted the recommendation and signed the transfer forms and a client agreement on 7 August 2017. The forms were submitted to P on 21 August 2017, Mr F signed a declaration on 9 September to say that he had received and read the suitability report and on 11 October 2017 £576,298.96 was received into the personal pension. IFM received an initial advice fee of £5,750. The servicing of Mr D's pension was transferred to Firm E, who took a 1% annual fee to provide ongoing advice.

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

In October 2017, Mr F accessed £40,000 of his tax-free cash (TFC) to buy a new car, help his children and go on holiday. In April 2018 Mrs F sadly and unexpectedly passed away. Mr F retired in March 2019.

In June 2020, Mr F approached another financial adviser because he'd noticed his personal pension with P had decreased in value significantly. He was also unhappy with P's charging structure and wanted to move to a lower cost plan with a wide range of investments that would allow him to switch funds. Mr F was, at that point, living on his savings as he wanted his plan to recover. Mr F was advised to transfer his personal pension from P to another provider (R) which he did in August 2020 at which point he started to drawdown on his fund.

In October 2020 Mr F complained to IFM that the advice he'd been given to transfer out of his DB scheme had been unsuitable and that the transfer shouldn't have been recommended in his circumstances as they were at the time. He said that the nature of the benefits which could have been carried forward into the BSPS2 scheme were highly unlikely to be matched through the personal pension IFM arranged for Mr F.

IFM looked into Mr F's complaint but didn't agree that it should be upheld. It said Mr F had a strong and clear objective at the time of the advice of retiring early which the transfer enabled him to meet. It said this, taken with the concerns about the long-term prospects of the scheme gave him good reason to for considering the transfer and having the freedom to control his own pension outweighed the guarantees associated with the DB scheme. IFM said that other ways of meeting Mr F's needs were explored but it was clear that they could not be met by remaining in the scheme and moving into the PPF or opting to join BSPS2.

Unhappy with the outcome of IFM's investigation, Mr F complained to this service. Our investigator looked into Mr F's complaint and recommended that it was upheld. He said he thought that the recommendation made by IFM that Mr F transfer his benefits was unsuitable. He noted that Mr F was clearly looking to retire early and, given his circumstances at the time he was deciding what to do, our investigator thought the benefits offered by the PPF would have been more favourable and should have been used by IFM for comparison purposes when advising Mr F. Our investigator recommended that IFM should compensate Mr F for the losses he incurred by transferring his DB pension and that compensation should be based on him having opted to join the PPF.

Mr F's representative responded and made the following comments:

- Mr F had no pressing need to access his personal pension for a lump sum or to enter drawdown and could have used his ISA savings to provide any additional sums he needed.
- If Mr F had remained in the BSPS (and transferred to the PPF) he would not have accessed his BSPS benefits as early as he did.
- People behave differently when they have a personal pension to when they belong to a DB scheme so it would be wrong to assume that had IFM advised Mr F against transferring then he would still have acted in the same way by accessing TFC early and entering drawdown for non-essential reasons. Consequently Mr F's losses should be calculated to age 65.
- That Mr F's losses should be calculated as though IFM had recommended he transfer to BSPS2 and not the PPF and that whichever of the two calculations showed the greater loss should be used as the basis for compensating Mr F.
- If it is shown that the PPF shows the greater loss, IFM should carry out a further loss calculation. This additional calculation should reflect the fact that the BSPS trustees bought an insurance policy as part of the process of the scheme exiting its PPF assessment and completing its buy-out. It said the buy-out was due to be finalised later this year and had Mr F been a member of the PPF he would've benefitted from the expected increases as a result of the buy-out. Consequently Mr F's representative said two more calculations should be carried out; the first that IFM calculates and pays compensation now comparing his existing benefits with the PPF and second once the buy-out is completed, and its known how the PPF benefits will increase, IFM should do a second calculation in line with the latest FCA guidance on DB transfer redress applicable at the time and base the calculations on the benefits Mr F would have been entitled to after the buy-out. If the second calculation results in lower, or the same, redress than the first, no further action should be taken.

IFM disagreed with our investigator's assessment and responded making the following points:

- That despite accepting that Mr F intended to retire in the short-term we had failed to recognise that the only way he would be able to reach this clearly stated objective was to transfer his pension.
- If Mr F had transferred to BSPS2, or remained with BSPS and moved to the PPF, then early retirement would not have been affordable.

- It disputed that it hadn't properly demonstrated Mr F's income needs and referred to the detail included on the fact-find it had completed. None of the outgoings listed there were ones that would cease in retirement.
- That Mr F's statement in the fact-find that his income needs would decrease after 10-years wasn't unsubstantiated because it was apparent from the fact-find that Mrs F's pension of £5,400 would become payable when she reached 65 along with his own state pension when he reached 67. It said by this point, Mr F's income needs would largely be being met from sources other than his personal pension.
- Our investigator's findings that Mr F could meet his income needs from the lower benefits available under BSPS2 or the PPF were wrong.
- That our investigator's comment that Mr F's preference for a fixed income casted doubt over his real desire for flexibility failed to recognise that Mr F had said on the fact-find that his second highest priority was 'flexibility and control of income in retirement'. IFM said that there was no inconsistency between this statement and Mr F's desire for a fixed rather than a variable income. It said it was important to remember that Mr F needed flexibility in the way he drew his pension in order to achieve the fixed and steady income he anticipated he would need throughout his retirement. This would not have been possible through BSPS2 or the PPF.
- Our investigator suggested Mr F was risk adverse based on certain answers given in the fact-find but failed to consider other answers given by Mr F. Mr F was a low-risk investor and was fully advised on, understood and accepted, the risks associated with the transfer which were risks he was willing to take in order to achieve his objectives.
- Whilst early retirement was an option for those entering the PPF it wasn't a viable option for Mr F.
- The terms of BSPS2 weren't known at the time but it was known they were intended to be less generous than the original scheme and given Mr F couldn't afford to retire early under the original scheme then he clearly wouldn't be able to afford to retire under BSPS2.
- It accepted there was an error in the suitability report where it indicated there was no lump sum payable on death before retirement within the BSPS when, in fact, Mrs F would have been entitled to a return of Mr F's member contributions of just over £66,500 if he had died before retirement. Whilst the error was regrettable, IFM said it doesn't consider that it was a relevant factor in Mr F's decision making because death benefits pre-retirement weren't a priority for Mr F given that he intended to retire imminently anyway. If they had been a priority it is clear that Mrs F would have been significantly worse off by Mr F remaining in the scheme.
- IFM disagreed that the advice it gave Mr F was unsuitable or that if he'd been advised differently that he would have elected to have moved to the PPF.

Our investigator considered what both Mr F and IFM had said in response to his view but wasn't persuaded to change his mind about Mr F's complaint. Whilst the complaint was waiting to be allocated to an ombudsman, Mr F's representative confirmed that he accepted our investigator's view regarding how compensation should be calculated (i.e. based on him having opted to join the PPF). IFM also replied to say that our investigator hadn't properly considered its further comments so it still did not accept his view that the complaint should be upheld. It made some further comments which it asked the ombudsman to take into account when considering the complaint.

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.

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, IFM should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr F's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Financial viability

IFM carried out a transfer value analysis report (as required by the regulator) showing how much Mr F's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield). This analysis was based on his existing BSPS scheme benefits, but Mr D didn't have the option to remain in the BSPS; he either needed to opt into BSPS2 or move with the existing BSPS scheme to the PPF.

IFM has argued that at the time it was advising Mr F, the terms of the BSPS2 scheme weren't known aside from the fact they were predicted to be less favourable than the existing scheme. Whilst the full details of what BSPS2 would entail weren't known, the terms were about to be imminently announced. But I can't see that IFM cautioned Mr F about transferring ahead of knowing what those terms were. I think IFM should have advised Mr F to wait and see what the terms of BSPS2 were when they were announced so that he could see if retirement under the new scheme was affordable or not and so he could make a fully informed choice about what action was in his best interests.

According to the fact-find and the suitability report Mr F wanted to retire early – even as early as immediately *'if transfer figures are OK'* (there is no information about what 'OK' transfer figures actually looked like to Mr F). IFM says the *only* way for Mr F to achieve this objective was to transfer his scheme to a personal pension; I'm unable to agree.

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.

Despite Mr F saying that he was interested at retiring immediately, or if later around age 60, the suitability report only set out the relevant critical yields for retirement at age 65; which were 9.9% in order to match the benefits from Mr F's existing DB scheme and 3.9% to match the benefits under the PPF at the same retirement date. Given that the funds would be invested for less time and would be required to pay income for longer, I think the relevant critical yields at age 60 were likely to be higher than this. The transfer value analysis didn't provide the critical yields for taking a reduced pension and TFC either under the BSPS or the PPF.

The critical yield of 9.9% per year at age 65 compares with the discount rate of 3.5% per year for 8 years to retirement 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, Mr F's attitude to risk and also the term to retirement. Mr F was assessed as having a low attitude to risk; given he wanted to retire imminently, Mr F had no time or capacity to build up his fund or tolerate any losses. So I think that assessment was reasonable.

There would be little point in Mr F 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, given the discount rate of 3.5% and the regulator's lower projection rate of 2%, I think that Mr F was most likely to receive benefits of a lower overall value than those provided by the PPF (and potentially the BSPS2) by transferring his DB scheme to a personal pension as a result of investing in line with that attitude to risk.

I don't consider it to be unreasonable to refer to the discount rate in my findings. Although taking this into account was not required by the regulator when giving advice, it's important to note that I haven't based my findings on this. But I do think it a reasonable additional consideration when seeking to determine what level of growth was reasonably achievable at the time of the advice. Under COBS 19.1.2 the regulator required businesses to compare the benefits likely to be paid under a DB scheme with those payable under a personal pension by using reasonable assumptions. So, businesses were free to use the discount rate as this would be considered a reasonable assumption of the likely returns. And in any event, this has been considered in tandem with the regulator's published projection rates, which providers were required to refer to. And it is this combination, along with Mr F's attitude to risk, which leads me to be believe he'd likely be worse off in retirement if he transferred out of the DB scheme.

IFM says that the critical yield is of limited relevance because it is based on the growth required to produce a fund large enough to purchase an annuity on the same basis as the benefits provided by the DB scheme. IFM says Mr F didn't want an annuity, it said he wanted to take his benefits flexibly and it said he wanted to take full advantage of the 'pension freedoms' so any transfer value analysis was largely irrelevant. But the regulator required IFM to consider the rate of investment growth that would have to be achieved to replicate the benefits being given up. So, it needed to provide an analysis based on the critical yield so I do think it is a relevant consideration here, particularly as Mr F said in the fact-find that he would *'prefer [a] fixed'* income.

IFM has provided cashflow models which it says shows the viability of the transfer. The most accurate cashflow model that reflects Mr F actual objectives and circumstances is the one in the suitability report which is based on Mr F taking £40,000 as TFC immediately upon retirement and a monthly income thereafter of £2,000 (not index linked to inflation). But this model, based on the regulator's lowest projection rate, shows that Mr F's pension fund would run out by the time he was aged 79. If Mr D been advised to remain in BSPS and transfer to the PPF however, his pension would never have run out, regardless of how long he lived. And I consider the regulator's lowest projection rate to be the most relevant given Mr F's attitude to risk.

While IFM has referred to the past performance of the funds it recommended to him, 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. And I note that Mr F ticked the fact-find statement, *'Low Risk – I am a conservative investor who requires limited exposure to the equity market. I am willing to accept growth in line with inflation'.*

In summary, even if the BSPS had moved to the PPF and Mr F's benefits were reduced as a result, he would have still been very unlikely to match, let alone exceed, those benefits by transferring to a personal pension. By transferring his pension I think it was highly likely that Mr F would be financially worse off in retirement.

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

Flexibility and income needs

It seems one of the main reasons that IFM recommended this transfer was for the flexibility and control it offered Mr F. Having considered the evidence, I don't think Mr F needed to transfer his DB scheme to a personal pension so he could have flexibility in retirement.

I think it's important to note here that Mr F did not have concrete plans to retire immediately. Mr F was taking advice because he needed to make a decision about his future benefits and I think it is very clear from the fact-find that Mr F wanted to understand whether he could afford to retire immediately. If not, the fact-find demonstrates he was prepared to wait and access his deferred benefits closer to age 60. Crucially, he required advice as to what was in his best interests.

It's evident that Mr F could not take his DB scheme benefits flexibly. Although he could choose to take TFC and a reduced annual pension, Mr F had to take those benefits at the same time. But I'm not persuaded that Mr D had any concrete need to take TFC and defer taking his income, or to vary his income throughout retirement. To my mind this seems more of a 'nice to have' rather than a genuine objective. And an adviser's job isn't to simply facilitate a customer's wants. Any objectives should be thoroughly interrogated to determine if they are realistic or not or achievable through other means. And ultimately the adviser had to determine whether giving up the secure, guaranteed benefits of available through the BSPS (and then the PPF) was in Mr F's best interests.

I don’t think Mr F had a genuine need to access his TFC early so I think he could have left his funds invested until a later date, or until he was ready to draw his pension. I say this because it is clear from the fact-find that Mr F was, at the time of the advice, entirely debt free. He and Mrs F had a monthly disposable income, after all outgoings, of £1,500. They also had accessible savings of £50,000. The fact-find asked Mr F what capital expenditure he expected to use his TFC for and he noted £10,000 for a new car, £20,000 to gift his daughters, £15,000 on home improvements £10,000 on travel (so in all £55,000). Mr F said he anticipated expending these sums in the next year.

But I can’t see that IFM explored other means of Mr F paying for his intended capital expenditure or that it investigated with him the real timetable for needing the sums he cited. And given Mr F’s monthly available disposable income there seems to be no exploration of whether some of that could be utilised in some way to achieve the capital expenditure he had identified. Overall I don’ think that Mr F’s desire for the capital items he listed was a good enough reason for him to be giving up a secure, guaranteed, escalating pension income in retirement. I think, given Mr F’s financial situation at the time, the financial objectives for transferring his pension to access the TFC aren’t justified, particularly when he could’ve used his savings – which were likely to be achieving minimal returns at the time – to pay for the vast majority of the things he wanted to spend the money on.

Mr F’s full DB pension (if he took no TFC) at normal retirement age of 65 was forecast to be £23,609 per year. If he took early retirement this figure was subject to a downward adjustment of 30% if retiring at 55 or 18% if retiring at 60. Whilst IFM didn’t obtain an early retirement quote for Mr F from the scheme, it noted in the suitability report that if he drew his DB pension at that point (at age 56), it estimated that it would give him an annual pension of £17,230 per year or £1,435 per month. It also estimated that if Mr F chose to take the TFC he was entitled to from the scheme at that point it would give him about £81,300 and he would receive an estimated reduced pension of £12,200 per year or £1,016 per month.

Of course, all these figures are moot given that the scheme they were based on was going to move into the PPF. But if IFM wanted to discharge its regulatory obligations to Mr F properly then it should have conducted its analysis based on the scheme moving to the PPF (because that was certain to happen) which would have allowed Mr F to make a proper comparison. That way he could have seen what benefits he would have been entitled to if taking immediate retirement. All I do know is that at 65, Mr F could’ve taken an income of £18,887 under the PPF. Analysing a scheme that was about to cease to exist in its current state wasn’t having due regard to Mr F’s information needs. And it’s worth noting that the early retirement factors under the PPF were more favourable than the existing scheme.

I’ve seen no evidence that IFM explored Mr F’s retirement objectives with him. Most people, if asked, say that they would want to retire as early as possible. But if IFM had had full regard to Mr F’s information and communication needs I think it should have explored his actual retirement plans and what was important to him. And it should have provided him with more information about the PPF, and its associated guarantees, and what he could expect by way of a pension at certain ages, so that Mr F could make an informed choice. But without this information, Mr F chose to transfer his scheme in part because (as noted on the fact-find) he had concerns about the PPF. But I can’t see evidence of any explanation or reassurance given to him by IFM about the benefits it offered.

And rather misleadingly, IFM told Mr F that the PPF wouldn’t let him retire early when the very opposite is true. Knowing that Mr F wanted to retire soon, IFM should have known that moving to the PPF might be in Mr F’s best interests and advise him about it accordingly – but it didn’t.

I also can’t see evidence that Mr F had a strong need for variable income throughout his retirement. Whilst Mr F said he thought he needed £2,000 per month in retirement and IFM said he could drawdown this amount for about the next 10 years until he received his state pension and Mrs F’s pension could be taken I can’t see there was any interrogation of Mr F about why he’d selected this figure. It follows that I don’t agree with IFM’s statement that moving to the PPF would have made early retirement unaffordable for Mr F. That simply isn’t known because it didn’t look into his circumstances forensically enough. Mr and Mrs F’s monthly outgoings were £1,855 of which Mrs F was contributing £1,520. There was no inference that Mrs F intended to retire before her normal retirement age of 65 so her income would continue for about another ten years. As I have already said, after all their joint outgoings, there was £1,500 per month left over.

So, IFM should have investigated Mr F’s financial retirement needs in greater depth and provided him with forecasts for what a PPF pension and TFC would look like at certain ages. Whilst Mr F said he would have liked to retire immediately it is possible that he might have found retiring under the PPF to have been favourable enough to have met his needs (not to mention that it would be index linked). And when Mr F’s state pension became payable it would have been in addition to his monthly pension and would not need to be used to reduce drawdown. A pension from the PPF would also have been for life, unlike Mr F’s personal pension which could well have run out before he died. But the information Mr F received from IFM was incomplete such that he was unable to make an informed decision. In the end Mr F retired at age 58 and didn’t start drawing his pension until he was 59.

While I don’t know what income or TFC Mr F would’ve been entitled to under that age through the PPF, I don’t think that it would’ve been substantially less than the sum available to him through the BSPS because of the favourable early retirement and commutation factors under the PPF.

So, I think it’s likely Mr F could have met his income needs in retirement by remaining in the DB scheme (and transferring to the PPF). I’m not persuaded, because the evidence doesn't support it, that Mr F did need an income of £2,000 per month but even if he did, I think it’s likely that he could have bridged the gap between the income provided by his DB scheme/PPF by relying on Mrs F’s income, his ISA savings and using some of his TFC to live on until his state pension age.

Death benefits

According to the fact-find, Mr F said he would like the ability to leave any remaining pension funds to his wife or his daughters.

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 F. But whilst I appreciate death benefits are important to consumers, and Mr F 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 F 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 F was prepared to accept a lower retirement income in exchange for higher death benefits.

This complaint is concerned with the advice Mr F received in August 2017 when it wasn’t known that Mrs F would suddenly be taken ill and pass away less than a year later. It is worth mentioning here that my findings are based on what IFM should have recommended to Mr F in August 2017 and not what he should have done in hindsight.

With this in mind, I think the existing death benefits attached to the DB scheme were underplayed at the time of the advice. Mr F was married and so the spouse's pension provided by the DB scheme would've been useful to his wife if Mr F predeceased her. I don't think IFM made the value of this benefit clear enough to Mr F. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. And as the cashflow analysis shows, there may not have been a large sum left/the fund may have been depleted particularly if Mr F lived a long life. In any event, IFM should not have encouraged Mr F to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

Furthermore, if Mr F genuinely wanted to leave a legacy for his spouse and children, which didn't depend on investment returns or how much of his pension fund remained on his death, I think IFM should've instead explored life insurance. It's possible this may not have been affordable given Mr F's age, but it should have been explored regardless.

In any event, whilst death benefits might be important for consumer, there generally shouldn't be a disproportionate emphasis on this compared to their own retirement needs. 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 F. And I don't think that insurance was properly explored as an alternative.

Control or concerns over financial stability of the DB scheme

I think Mr F's desire for control over his pension benefits was overstated. Mr F 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 their own. It appears to me that the concept of 'control' to Mr F was related to the security of his pension due to workplace rumours about what was happening to the scheme. So, I don't think that control of his pension was a genuine objective for Mr F– it was simply a consequence of transferring away from his DB scheme.

I don't doubt that Mr F was concerned about his pension. Lots of his colleagues at the time were transferring out of the scheme and he was worried his pension would end up in the PPF. He said this is why he wanted to move the pension into his control. So it's quite possible that Mr F was leaning towards the decision to transfer. However, it was IFM's obligation to give Mr F an objective picture and recommend what was in his best interest.

Mr F was particularly concerned about BSPS moving to the PPF. But from what I've seen, IFM didn't provide Mr F with an objective picture about the PPF and what this might mean for him specifically. Mr F was clearly interested in retiring early and early retirement reductions were in fact lower in the PPF than in the BSPS – he would most likely meet his retirement needs by moving to the PPF – but this wasn't shared with Mr F. And IFM should've explained to Mr F he was still unlikely to exceed the benefits available to him through the PPF if he transferred out. Overall, I don't think IFM did much to alleviate Mr F's concerns and fears. Instead, it appears to have used these concerns to justify the transfer.

Summary

I accept that Mr F was attracted by the idea of transferring. He might have heard from colleagues that this is what they were doing. And 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 Mr F. But IFM wasn't there to just transact what Mr F might have thought he wanted. The adviser's role was to really understand what Mr F needed and recommend what was in his best interests.

Ultimately, I don’t think the advice given to Mr F was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr F was very likely to obtain lower retirement benefits and in my view, there were no other particular reasons which would justify a transfer and outweigh this. I think Mr F could have met his objectives by not transferring his DB benefits. He could have likely covered his income needs at age 59 through the PPF and he would have been entitled to a guaranteed and secure income which continuously increased. And I don’t think he had any immediate need to access his TFC. Instead, if he wished to make use of a lump sum I think he should’ve been advised to withdraw funds from his ISA instead

I appreciate that at the time the advice was given there was a lot of uncertainty around the pension scheme and I’ve fully taken into account that Mr F was likely keen to transfer out as he was worried about his pension and colleagues were telling him this was a good idea. However, it was the adviser’s responsibility to objectively weigh up the options for Mr F. He should have advised him what was best for his circumstances and explained what he was giving up in the BSPS and that moving to the PPF was not as concerning as he thought. For the reasons given above, I think this advice should have been to remain in the BSPS and move with the scheme to the PPF.

On balance I think Mr F would have listened to the adviser and followed their advice. Mr F was an inexperienced investor and he was concerned about the security of his pension. This pension made up a significant part of his retirement provision, and I don’t think he would’ve wanted to take any unnecessary risk with it. So, if IFM had provided him with clear advice against transferring out of the BSPS, explaining why it wasn’t in his best interests, I think he would’ve accepted that advice.

If Mr F had stayed in BSPS, he would have shortly after had the choice to move to the PPF or transfer to a new scheme, the BSPS2. I carefully considered what Mr F likely would have done and on balance I think he would have opted to move to the PPF. I say this because at the time Mr F wanted to retire early. The BSPS2 wouldn’t have decreased Mr F’s initial entitlement by 10% like the PPF and some of his benefits would have had potentially higher increases in BSPS2. However, early retirement factors in the PPF were lower and commutation factors for the TFC entitlement were more favourable under the PPF. So overall, it’s likely Mr F’s income and TFC entitlement would have been higher in the PPF.

Under BSPS2, the spouse’s pension would be set at 50% of Mr F’s pension at the date of death, and this would be calculated as if no lump sum was taken at retirement. So the spouse’s pension would likely be lower in the PPF. However, Mrs F had her own DB pension. And I think on balance Mr F’s own benefits and higher TFC which he and his wife could benefit from earlier in retirement would have been more important to him.

So, I think IFM should compensate Mr F for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology. And it’s the benefits offered by the PPF at age 58 which should be used for comparison purposes. This is because I know that Mr F actually retired at this age and I think he would’ve taken his benefits from the PPF at that point.

I’m not going to comment here on Mr F’s representative’s submission regarding the calculation of compensation made in response to our investigator’s view. That’s because Mr F’s representative subsequently confirmed that he accepted our investigator’s view regarding how compensation should be calculated (i.e. based on him having opted to join the PPF).

Putting things right

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 Mr F whether he preferred any redress to be calculated now in line with current guidance or wait for any new guidance /rules to be published. Mr F didn't make a choice, so as set out previously I've assumed in this case he doesn't want to wait for any new guidance.

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 F.

A fair and reasonable outcome would be for the business to put Mr F, as far as possible, into the position he would now be in but for IFM's unsuitable advice. I consider Mr F would have most likely remained in his DB scheme if suitable advice had been given.

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 F retired at age 58, so this should be the basis for the calculations.

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 F's acceptance of the decision.

IFM may wish to contact the Department for Work and Pensions (DWP) to obtain Mr F'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 F's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr F'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 F 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/her/their 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 F 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 F.

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.

In October 2020, due to an improved funding position, the BSPS trustees bought an insurance policy as part of the process of the pension scheme exiting its PPF assessment and completing a buy-out. Pension Insurance Corporation plc (PIC) will become responsible for paying benefits directly to members. The process of the buy-out was expected to be completed by late summer 2022.
It's been announced that:

'When the buy-out happens all members whose PPF benefits are less than their full Scheme benefits (i.e. the amount they would be if the Scheme were not in a PPF assessment period) will see an increase to their benefits. All other members will see no change as a result of the buy-out.'

'For most members, PPF level benefits are less than full Scheme benefits. When the buyout happens, these members will see an increase to their current level of benefits so they will receive more than PPF levels. All other members will see no change to their current level of benefits as a result of the buy-out.'

Mr F retired at age 58 and I think he would have done the same if he had gone into the PPF. Due to the lower early retirement reduction factor which would have applied in the PPF, I think (albeit without certainty in advance of knowing the detailed terms of the buy-out) that entry into the PPF would have produced an overall better outcome for Mr F. As such, I think it's more likely the case that there would be no deficit in the PPF benefits which could be made up by the "buy-out" process.

For this reason I require IFM to undertake a redress calculation on the current known basis, rather than wait for the terms of any future buy-out to be confirmed. This is in order to provide a resolution as swiftly as possible for both parties, and bring finality to proceedings.

If Mr F accepts my final decision, he will be doing so on the basis of my understanding as set out above. It's important that Mr F is aware that, once any final decision has been issued, if accepted, it cannot be amended or revisited in the future.

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.

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.

IFM should also pay Mr F compensation of £300 for the distress and inconvenience its unsuitable advice caused him. He is now drawing his benefits yet has experienced uncertainty about what benefits will be available to him in the future.

My final decision

Determination and money award: I uphold this complaint and require Inspirational Financial Management Ltd to pay Mr F 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 F 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 F any interest as set out above on the sum of £160,000.

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

If Mr F 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 F can accept my decision and go to court to ask for the balance. Mr F 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 F to accept or reject my decision before 7 December 2022.

Claire Woollerson
Ombudsman