DRN-3673410

The complaint

Mr B complains about the advice given by Inspirational Financial Management Ltd ('IFM') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme with British Steel ('BSPS') to a personal pension arrangement. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

In March 2016, Mr B's employer announced that it would be examining options to restructure its business, including decoupling the BSPS (the employers' DB scheme) from the company. The consultation with members referred to possible outcomes regarding their preserved benefits, which included transferring the scheme to the Pension Protection Fund ('PPF'), or a new defined-benefit scheme ('BSPS2'). The PPF acts as a 'lifeboat' for insolvent DB pension schemes, paying compensation to members of eligible schemes for their lifetime. The compensation levels are, generally, around 90% of the level of the original scheme's benefits for deferred pensions. But the PPF's rules and benefits may differ from the original scheme. Alternatively, members of the BSPS were informed they could transfer their benefits to a private pension arrangement.

In May 2017, the PPF made the announcement that the terms of a Regulated Apportionment Arrangement (RAA) had been agreed. That announcement included that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr B's employer would be set up – the BSPS2. The RAA was signed and confirmed in August 2017 and the agreed steps were carried out shortly after.

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

Mr B was concerned about what the recent announcements by his employer meant for the security of his pension, so he sought advice. IFM says Mr B was referred to them by another adviser – something Mr B disputes. But in any event, Mr B met with IFM and it completed a financial planning questionnaire with him to gather information about his circumstances and objectives. This document is undated, so I've assumed the meeting took place around October 2017. Amongst other things the fact-find recorded that Mr B was aged 46; he was working full-time; he was living with his unmarried partner and had two young dependent children; he owned his own home with an outstanding mortgage; he was contributing to his workplace pension scheme; and ideally he wanted to retire at 55. IFM also carried out an assessment of Mr B's attitude to risk, which it deemed to be 'low'.

On 1 November 2017, IFM advised Mr B to transfer his BSPS benefits into a personal pension and invest the proceeds within two investment funds (70/30 split) which IFM deemed matched Mr B's attitude to risk. In summary, the suitability report said the reasons for this recommendation were because Mr B imagined he'd require flexibility to control and tailor his income as opposed to having a pre-set level of income; he wanted to ensure he could retire when he wanted to and not take the risk of having restrictions in place when the scheme either entered the PPF or it became the new BSPS; and because Mr B was prepared to accept more risk to achieve flexibility in retirement.

Mr B accepted the recommendation and sometime in February 2018, just under £360,000 was received into his new personal pension plan.

Mr B complained to IFM in 2022 about the suitability of the transfer advice. Mr B raised a number of complaint points including that his recollection was that moving to the BSPS2 or the PPF wasn't discussed as an option and that it was taken as a given he'd transfer his pension.

IFM didn't uphold Mr B's complaint. In summary it said the transfer advice was suitable. It said this was because:

- Sufficient information was gathered about Mr B's general attitudes, beliefs, opinions and feelings in respect of his circumstances - Mr B's goals were clear.
- Mr B's objectives pointed towards a transfer.
- Mr B wished to retire at 55 on an assumed income of £15,000 once his mortgage was repaid and because he wanted to draw monies at a higher level before his received his state pension this wasn't possible without a transfer.
- Mr B wanted flexibility and control rather than being limited by scheme rules or those of the PPF.
- Death benefits were important to Mr B – the advice improved the position taking account of his unmarried status.
- A robust approach was taken to assessing Mr B's attitude to risk and capacity for loss to transfer, which it believed was appropriate to justify the transfer and make the investments at the required level.

Dissatisfied with its response, Mr B referred his complaint to us. An investigator upheld the complaint and required IFM to pay compensation. In summary they said the advice wasn't suitable. They said that it didn't appear IFM had carried out a transfer analysis for Mr B - but based on what it said in the suitability report about the likely growth rates required to match the benefits under the existing BSPS at age 65, there was no reasonable prospect of Mr B improving on his benefits at retirement by transferring. And they said there were no other compelling reasons to justify the transfer to outweigh this – for example Mr B had no retirement plans so there was no urgent reason to transfer out of the BSPS at this stage, better death benefits wasn't a reason to transfer, his concerns about the scheme shouldn't have led to the transfer and there was no reason for him to take any risk with his pension at this time. They said if suitable advice been given, Mr B ought to have been advised to move his benefits to the BSPS2.

IFM didn't respond to the investigator's findings, so it was assumed it disagreed.

Because the complaint couldn't be resolved informally, the complaint was passed to me for 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 Businesses (‘PRIN’) and the Conduct of Business Sourcebook (‘COBS’). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The applicable rules, regulations and requirements

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

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

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

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

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

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 B’s best interests.

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. My reasons are set out below.

- I’m not persuaded that IFM carried out a transfer value analysis (‘TVAS’) specific to Mr B’s DB benefits and his transfer value as IFM was required to do by the regulator. Reference to critical yields or the required investment returns to match the BSPS benefits was based solely on past analysis and typical rates it said it had seen to date. It said investment returns were typically around 6-8% a year to match the existing scheme at age 65 and around 4% to match the benefits available through the PPF.

- Not only were these rates based on a later retirement age than it was recorded Mr B intended to retire at and so what the analysis and advice ought to have based on, it was known at this point that continuing in the BSPS in its existing form wasn’t an option for Mr B – so the generic reference to these critical yields was somewhat redundant. IFM didn’t undertake any analysis of the benefits Mr B would’ve been due under the BSPS2, even though details were available. I think it should’ve done.

In any event, given what we know about the BSPS2, I think the critical yields to match the benefits the BSPS2 would've provided from age 65 were likely to be between those of the BSPS and the PPF.

- Given Mr B's recorded 'low' attitude to risk, the discount rate of 3.5% for eight years to retirement (age 55) and the regulator's low projection rate, I think Mr B was always likely to receive pension benefits, from age 55, of a significantly lower value that those he'd have been entitled to under the BSPS2 or the PPF by transferring and investing in line with that attitude to risk. I think the critical yields, had IFM produced them, based on the benefits available to Mr B at age 55 through both the BSPS2 and the PPF would've likely been far higher than the generic figures it referred to in the suitability report analysis for age 65 given the shorter term to retirement.

- For this reason alone I don't think a transfer to a personal pension arrangement was in Mr B's best interests.

- IFM said Mr B thought he would like to retire at age 55 and that he was attracted to the flexibility a personal pension could provide in terms of how and when he could access his benefits. But Mr B was only 46 at the time of the advice and there's nothing to indicate he had any retirement plan let alone a firm one. Indeed IFM noted that, given Mr B's age, it wasn't possible to know what type of retirement income was the most appropriate for him, so it was too early to know whether the flexibility a personal pension would provide or the availability of a cash lump sum would satisfy his needs better than remaining in the DB scheme. Yet IFM continued to recommend the transfer regardless. I don't think it should've done – I don't think this was acting in Mr B's best interests.

- Mr B didn't have to transfer his pension to retire early - he already had this option available to him. While he couldn't take his DB scheme benefits flexibly, he was contributing to his workplace pension, which did offer flexibility. I think this along with Mr B's DB scheme would've likely given him the flexibility to retire early - *if* that's what he ultimately decided.

- I think it was too early for Mr B to give up the guaranteed income his DB scheme would provide when he didn't know what his needs in retirement would be or when. IFM says Mr B indicated he needed £15,000 a year from age 55, which wasn't achievable by remaining in the scheme. But firstly a need for £15,000 a year isn't recorded anywhere in the advice paperwork. And secondly, I don't think Mr B reasonably knew at this time was his expenditure would be when he retired and so what his income requirement was. Regardless, I think Mr B stood a better chance of meeting his needs by remaining in his DB scheme. It provided a guaranteed and escalating income for life, which wasn't going to be bettered by transferring. I think this was a more appropriate way to meet Mr B's future income needs.

- Overall, IFM's reference to flexibility was not in my view a genuine objective of Mr B, but was instead simply a feature or a consequence of transferring to a personal pension arrangement.

  Nothing indicates Mr B had a need for variable income throughout retirement or a need for a future lump sum and defer taking an income. So, I don't think transferring to obtain flexibility was therefore in his best interests.

- IFM said death benefits were important to Mr B and that the transfer improved the death benefit position taking account of his unmarried status. But the priority here was to advise Mr B about what was best for his retirement.

- While the transfer figure would no doubt have appeared attractive to Mr B as a potential lump sum, the sum remaining on death following a transfer was always likely to be different. As well as being dependent on investment performance, it would've also been reduced by the income Mr B drew in his lifetime. So it may not have provided the legacy that Mr B might have thought it would.

- I accept the existing scheme didn't provide death benefits to unmarried partners – but it's possible that Mr B might get married in the future, in which case the spouse's pension could've been valuable to his family in the event of his death.

- But if Mr B had genuinely wanted to leave a legacy for his family, IFM could've explored life insurance as an alternative. It was recorded that Mr B's partner's income was soon to increase, so it appears there was likely to be capacity to meet the associated premiums. And this could've been considered on a whole of life or term assurance basis – which was likely to be cheaper. But I've not seen evidence IFM did so.

- Overall, I don't think different death benefits available through a transfer justified the likely decrease of retirement benefits for Mr B. I don't think that insurance was properly explored as an alternative. And ultimately IFM should not have encouraged Mr B to prioritise the potential for alternative death benefits through a personal pension over his security in retirement.

- Mr B may have legitimately held concerns about how his employer had handled his pension and he was likely worried about ending up in the PPF. But it was IFM's role to objectively address those concerns. At the time of the advice, all signs pointed toward the BSPS2 being established. But even if not, the PPF still provided Mr B with guaranteed income, the option of accessing tax-free cash and despite what IFM recorded at the time, he could still take early retirement. Mr B was unlikely to improve on these benefits by transferring. So, entering the PPF was not as concerning as he might've thought, and I don't think any concerns he held about this meant that transferring was in his best interest.

Overall, I can't see persuasive reasons why it was clearly in Mr B's best interest to give up his DB benefits and transfer them to a personal pension at this time when he had the option of opting into the BSPS2. And I also haven't seen anything to persuade me that Mr B would've insisted on transferring, against advice to remain in the DB scheme – he had little or no investment knowledge or experience and nothing suggests to me that he had the confidence or requisite skill to do so. So, I'm upholding the complaint as I think the advice Mr B received from IFM was unsuitable for him.

I can see the investigator also recommended an award of £300 for the distress and inconvenience the matter has caused Mr B. So I've also thought about whether it's fair to award compensation for distress and inconvenience - this isn't intended to fine or punish IFM – which is the job of the regulator. But I think it's fair to recognise the emotional and practical impact this had on IFM.
Taking everything into account, including that I consider Mr B is now at the age when his retirement provision is of greater importance, I think the unsuitable advice has caused him distress. So I think an award of £300 is fair in all the circumstances.

Putting things right

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

IFM must therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement PS22/13 and set out in the regulator's handbook in DISP App 4:
https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter.

IFM should use the FCA's BSPS-specific redress calculator to calculate the redress. A copy of the BSPS calculator output should be sent to Mr B and our Service upon completion of the calculation together with supporting evidence of what IFM based the inputs into the calculator on.

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

This calculation should be carried out using the most recent financial assumptions in line with DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr B's acceptance of my final decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, IFM should:

- calculate and offer Mr B redress as a cash lump sum payment,
- explain to Mr B before starting the redress calculation that:
    - their redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
    - a straightforward way to invest their redress prudently is to use it to augment their DC pension
- offer to calculate how much of any redress Mr B receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr B accepts IFM's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr B for the calculation, even if he ultimately decides not to have any of their redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr B's end of year tax position.

Redress paid to Mr B as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, IFM may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension.

Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr B's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

Where I uphold a complaint, I can award fair compensation of up to £170,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £170,000, I may recommend that the business pays the balance.

My final decision

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

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

Inspirational Financial Management Ltd should also pay Mr B £300 for the distress and inconvenience this matter has caused.

If Mr B 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 B can accept my decision and go to court to ask for the balance. Mr B 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 B to accept or reject my decision before 7 November 2023.
Paul Featherstone
Ombudsman