

## The complaint

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

Professional representatives have helped Mr N to bring this complaint. But, for ease of reading, I will refer to the representatives' comments as being Mr N's.

## What happened

In March 2016, Mr N's employer announced that it would be examining options to restructure its business, including decoupling the BPS (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')<sup>1</sup>, or a new defined-benefit scheme ('BPS2'). Alternatively, members were informed they could transfer their benefits to a private pension arrangement.

In May 2017, the PPF made the announcement that the terms of a Regulated Apportionment Arrangement ('RAA') had been agreed. That announcement said that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr N's employer would be set up – the BPS2.

In August 2017 Mr N approached IFM for advice. It met with him and asked him to complete a fact-find questionnaire, which he did. Amongst other things Mr N said:

- He was almost 49 and married. His wife was the same age. They were both in good health and they had a 16 year old child.
- Mr N and his wife were both working. Mr N earned around £32,500 a year and his wife around £12,000 a year. They had net earned income of around £3,000 each month with regular outgoings of around £1,300 a month.
- They had a number of buy-to-let properties which, after costs, earned a net income of around £18,000 a year.
- They owned their own home.
- They had mortgages with around £115,000 owing.
- Mr N had £100,000 in savings.
- He had joined his employer's recently set up defined contribution ('DC') pension scheme. He and his employer were each contributing 6% of his salary towards that.
- He had a balanced attitude to risk.
- Mr N wanted to retire between ages 55 to 60. He also ticked a box to say he didn't require his pension benefits within the next ten years.

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<sup>1</sup> The PPF acts as a 'lifeboat' for insolvent DB pension schemes. It pays compensation to members of eligible schemes for their lifetime. The compensation levels are, generally, around 90% of the level of the original scheme's benefits for deferred pensions. But the PPF's rules and benefits may differ from the original scheme.

- His DB scheme had a cash equivalent transfer value ('CETV') of £326,678.

On 18 September 2017 the BSPS trustees provided Mr N with updated figures concerning his entitlement from the scheme including that its CETV had been revalued to £337,331. At that date (without allowing for indexation) his yearly pension entitlement was around £13,375.

IFM sent Mr N its suitability report setting out its recommendations and the reasons for those on 22 September 2017. It recommended that Mr N transfer his BSPS benefits to a named personal pension. Amongst other things IFM said that the results of a transfer value analysis (TVAS) report were "largely academic" because Mr N didn't intend to buy an annuity when he retired. It said its analysis to date of the BSPS was that the yearly investment returns required to match the BSPS benefits (the critical yields) were "typically around 8.0%" at age 65. It added that achieving that yearly return was probably an unrealistic expectation."

It also said the reasons for its recommendation were:

- Mr N required the flexibility to control and tailor the frequency and amount of income he received from his pension fund in retirement to suit his circumstances, needs and tax position, as opposed to the pre-set income his DB scheme would provide.
- He wanted to ensure he could retire when he chose and didn't want to take the risk of having restrictions in place when the scheme enters the PPF or when it became the BSPS2.
- He was prepared to accept more risk in return for greater flexibility over when and how he took benefits from his pension fund.

IFM said it would charge Mr N £4,750 for its advice and arranging the transfer. It would also charge him a fee of 0.4% of the fund's value for providing ongoing financial advice. The named personal pension provider would also charge a fee of 0.4% of the fund value for its service. Mr N accepted IFM's advice the same day.

On 4 October 2017 IFM submitted Mr N's application to set up the named personal pension to its provider. In November 2017 IFM confirmed the named personal pension provider had completed the transfer.

Mr N complained to IFM in December 2021 that its transfer advice wasn't suitable for him. IFM replied in March 2022. It didn't uphold his complaint. Amongst other things it said:

- it couldn't locate a copy of the TVAS it would have completed at the time of its advice. It asked Mr N if he had kept a copy.
- When it gave the advice the BSPS2 was still a proposal only and its benefits were unknown. Also there was no guarantee it wouldn't go into the PPF at some point in the future.
- Mr N wanted control and flexibility of his pension. The freedom to achieve this "outweighed the promise of a guaranteed pension in the future."
- The risk of his fund falling into the PPF, and the loss of future transfer options and the ability to retire early, were key motivations for Mr N.
- The improved death benefits from a personal pension were important to him.
- He could only achieve his objectives by transferring from the BSPS.

One of our investigators looked into Mr N's complaint. The Investigator didn't think IFM's advice was suitable for Mr N. The Investigator recommended that IFM should establish if Mr N had suffered a loss and pay compensation, including £250 to address his distress and inconvenience.

IFM didn't respond to our Investigator's complaint assessment so the matter 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 Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

#### *The applicable rules, regulations and requirements*

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

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

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

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

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

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for largely the same reasons our Investigator gave.

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

#### *IFM's documents and advice process*

At the time IFM gave Mr N advice the regulator required it to carry out a TVAS report. But if IFM ever obtained such a report it no longer has a copy.

The TVAS should have set out the growth rates required (the critical yields) for an alternative pension arrangement to match the benefits from the DB scheme. And given Mr N had expressed an interest in potentially retiring early I would have expected the TVAS to have shown the critical yield at Mr N's normal retirement age and also his preferred early retirement age. Similarly, given that there was a possibility that the DB scheme would move into the PPF I would have expected the TVAS to show the relevant critical yields to match

the benefits from the PPF. I would also have expected it to show Mr N's entitlement from the DB scheme, and the PPF, revalued to his likely dates of retirement.

I find it extremely unlikely that IFM produced a TVAS which showed all those things. In fact it's not clear that IFM obtained a TVAS at all. Its suitability report doesn't set out at any point an actual critical yield figure for either the BPS or the PPF. It does give an estimated critical yield of 8% which is based on its analysis of other cases. But, if it had obtained a TVAS, as the regulator required, then I would have expected it to quote the actual critical yields. But it didn't do so.

I've noted that IFM said that the critical yield figures were "largely academic" as Mr N didn't wish to buy an annuity. But a key reason for producing a TVAS is it shows the value of the benefits being given up in order to transfer. But IFM didn't present those figures to Mr N. I think that was a significant omission.

Further, IFM recognised in its suitability report that Mr N didn't have the option to remain in the BPS – he either needed to opt into the BPS2 or move with the scheme to the PPF. So the BPS figures weren't a realistic comparison.

At the time IFM produced its suitability report the BPS2 was still some way from being finalised. But, some months earlier, in May 2017, the PPF announced that the terms of the RAA had been agreed. Under the announced plans, Mr N's employer agreed to set up and sponsor the BPS2, subject to certain conditions relating to funding and size being satisfied. The Pensions Regulator approved the RAA on 11 August 2017.

Subsequently, on 28 August 2017, in the same week IFM asked Mr N to complete a fact-find and around three weeks before IFM produced its suitability report, the BPS trustees provided scheme members with an important update. They said the members' employer had made an expected payment into the BPS of £550 million, as part of its agreement with The Pension Regulator and that was likely to result in an improvement to transfer values. And for those with unexpired transfer values, like Mr N, administrators would issue updated valuations which would be guaranteed until at least December 2017.

The confirmation that Mr N's employer had made the payment referred to was announced on 11 September 2017. On 18 September 2017 the scheme administrators sent Mr N his updated CETV.

Four days later, on 22 September 2017, IFM noted in its suitability report that it was expecting the BPS2's "full details" to be announced shortly. But, save for saying that the benefits from the BPS2 would "inevitably be inferior to the current scheme and will not provide the same flexibility as a personal pension", IFM didn't provide any further advice or guidance in terms of what this might mean for Mr N. And in order to ensure he had all the information he needed in order to make an informed decision before transferring, I think it should have done that.

Soon after, on 27 September 2017, the scheme trustees provided a further update to members. They said that, in October 2017, they would be sending out options packs, with information about the BPS2, to give members the material they would need in order to make the right choice for them.

So it's evident that, while IFM wouldn't have been aware of the full details of the BPS2 it should have known that the BPS2 would very likely go ahead. And, in order to give Mr N enough information to make a fully informed decision about what was in his best interests, I think IFM should have told Mr N to defer making a decision on the transfer until further details of the BPS2 were known. That would have given IFM the opportunity to provide an

analysis of the comparison between the BSPS2 benefits, the PPF and the named personal pension. But IFM didn't provide any specific advice about what the likely benefits from the BSPS2 were.

In fact IFM recognised in its suitability report that a comparison of benefits against the current BSPS scheme didn't present a "true picture" and arguably "no value" to the process. But it went ahead with its advice process whilst recognising that it was flawed.

The BSPS2 was thought to be of greater benefit than the funds going into the PPF for the scheme's normal retirement age of 65. So, in reality, the growth rates required to match the BSPS2 benefits were likely to be somewhere between those required for the PPF and those for the BSPS. But as I've already said, IFM didn't provide any actual critical yield figures for either the BSPS or the PPF. But it should have become aware, before submitting Mr N's application to the named personal pension provider on 4 October 2017, that further details about the BSPS2 would soon become available. So, I think it should have deferred submitting Mr N's application to transfer out of the DB scheme in order to allow it to provide an analysis of those BSPS2 benefits, once those became available. That would have allowed it to update its advice to include, in one place, a comparison of the relevant benefits of moving to the PPF, opting into the BSPS2 or transferring to the named personal pension. Had it done so Mr N would have been in a better place to make an informed decision.

I recognise IFM didn't have the BSPS2 information when it drafted its suitability report and that wouldn't become available until the following month. But Mr N's CETV was guaranteed until December 2017. So IFM had no urgent need to press ahead with the transfer application when it did.

Further, transferring out of a DB scheme is a one-off event. Once transferred there's no going back, so the benefits of the DB scheme are usually lost forever. So, regardless that IFM might have felt that its advice process was at an end after it issued its suitability report, I think it should have ensured that Mr N had sight of all the information he needed in order to make an informed choice before making a decision to transfer. And that included the material about the likely benefits of the BSPS2. But IFM didn't defer the process in order to do that.

Also, there are other flaws in IFM's evidence gathering and advice process. For example, Its suitability report said that early retirement was "unlikely to be an option under the PPF". So it implied that Mr N would lose the option of taking early retirement if his pension went into the PPF. That is plainly wrong. In fact the benefits from the PPF for those taking early retirement and particularly for those wanting to take a tax free cash ('TFC') lump sum, are more generous than the benefits from the BSPS (or the BSPS2). So it would appear that IFM misled Mr N on that point.

It follows that I don't think IFM communicated with Mr N in a way that was clear, fair and not misleading. IFM made a recommendation to transfer, without having all the information Mr N needed in order to make an informed decision.

### *Financial viability*

When referring to financial viability, I mean how likely it was that Mr N would be better off in terms of retirement income by transferring.

As I've said above the regulator required IFM to carry out a TVAS but there's no compelling evidence it did so, or, if it did, it didn't refer to any of the figures from it when it produced its suitability report. So there was no clear reference point for Mr N to make an informed decision about what he'd be giving up by transferring.

IFM suitability report said that investment returns (critical yields) to match the BPS were “typically” around 8%. In its response to Mr N’s complaint IFM said the required growth rates were between 6 to 8% but it used the higher figure in order to represent a “worst case scenario”. But whatever rate it used IFM acknowledged that achieving such a yield was unlikely to be a realistic proposition. I agree that’s the case, but its comparison was against the BPS. However, as I’ve said above, Mr N didn’t have the option of staying in the BPS. And IFM didn’t provide the critical yield figures required for either the PPF or the BPS2. I think it should have done.

However, critical yields aren't the only figures we consider when looking at financial viability. And the regulator also provides growth projections, which, at the time of IFM’s advice had remained unchanged since 2014: the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%. So for someone with a balanced attitude to risk like Mr N, the chance of a growth rate of 5% was not impossible. But any growth would be reduced by the adviser and product charges that apply to a personal pension. In Mr N’s case, apart from the initial fee of £4,750 IFM charged, Mr N would also have to pay charges of 0.4% of the fund value each year to both IFM and the personal pension provider. So those charges would have reduced the investment growth by 0.8%. Those are not charges he would have to pay had he remained in the DB scheme environment.

IFM gave its advice 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. I'll explain that a discount rate is a measure of what an investment is likely to grow at in the future. 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 rates were 3.3% for six full years to retirement at age 55, 3.9% at age 60 and 4.3% at age 65. Those are considerably below IFM’s estimated critical yield. So, I think Mr N was most likely to receive benefits of a lower overall value than those provided by the BPS2. That’s because I think the critical yield was likely to be towards that of the BPS, if he transferred to a personal pension and took benefits at age 65, as a result of investing in line with his attitude to risk.

In addition, if there was a sustained period of poor performance then there was a very real chance that Mr N’s fund would grow at a much slower rate or could suffer losses. And while IFM did point out some of these risks to Mr N in its suitability report, as I've said above, I believe it should have deferred providing its advice until more was known about the BPS2. And then it should have advised Mr N that remaining in the DB scheme (the benefits under which would be guaranteed and escalated) rather than relying on investment growth in a personal pension would have been better suited to his needs.

Further, its notable that IFM has itself identified that the critical yields required were unlikely to be met by transferring. But it said in its suitability report that, as Mr N didn’t wish to buy an annuity, then growth rates were “largely academic”. In other words it’s dismissed any comparison figures as being of little use. However, I find critical yield figures a useful tool as they are a reasonable comparison of the growth required in order to replace DB benefits with something of a similar nature, that is a product that would provide a guaranteed income for life.

Also, at the time of IFM’s advice, the regulator required it to consider the rate of investment growth that would have to be achieved to replicate the benefits being given up. So, IFM needed to provide an analysis based on the critical yield and I do think it’s a relevant consideration here. That’s particularly the case as I don’t think Mr N could realistically say

with any certainty whether he would want to take a regular income at retirement or not. While he said he wanted to retire at some point between ages 55 and 60, that was at least six years away, and the scheme retirement age of 65 was still 16 years away. So it was entirely possible that Mr N would want at least some guaranteed income in retirement (which he could achieve by taking benefits from the DB scheme).

But, even if an alternative pension could match the required critical yield, there would be little point in Mr N giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme. So I'm not persuaded that transferring was in Mr N's best interests.

Of course financial viability isn't the only consideration when giving transfer advice, as IFM has argued in this case. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered this below.

### *Flexibility and income needs*

It seems the key reasons IFM gave for recommending a transfer was to allow Mr N to access his pension funds flexibly including the ability to retire early.

I've already said above that IFM told Mr N that if his pension were to move to the PPF then he wouldn't be able to take early retirement. I'll repeat that is wrong and in fact the provisions for early retirement from the PPF were known to be more generous than those from the BPS. So it's possible that, for Mr N, allowing his benefits to move to the PPF could have been the best option for him. But, while that's unlikely, owing to the absence of critical yields or other relevant evidence on IFM's file, such as Mr N's entitlement to TFC or his yearly pension benefits from the PPF at various ages it's difficult to say for certain.

Also, as far as I can tell IFM didn't do an analysis of what Mr N's income needs in retirement would be and how he would meet those. Mr N's evidence was that he had regular household outgoings of around £1,300 a month. That's equivalent to £15,600 a year net. And while I don't know exactly what his income needs in retirement would be I think that was likely a higher sum than he would receive from either the BPS2 or the PPF if he took TFC and a reduced pension. So I think it would have been fair to say that, if Mr N income needs remained the same and he was relying on his PPF or BPS2 income alone, he couldn't have afforded to take early retirement.

But Mr N wouldn't be relying on his DB scheme income alone to meet household expenses. Mr N and his wife also had a number of buy-to-let properties that were generating a net income of around £18,000 a year. That was more than their regular household income needs by itself. I appreciate that rental income can't always be guaranteed, but it seems probable that Mr N would continue to receive that rental income into his retirement. Alternatively, he could have sold one or more of the properties and used the equity released to support his income needs. So I don't think Mr N would have been reliant on his DB scheme income alone to meet the household expenditure. Therefore, it's not the case that he and his wife wouldn't be able to meet their household expenses if Mr N took early retirement.

Further, Mr N and his employer, together, were contributing to Mr N's DC pension scheme a sum of around £3,900 a year. So, without allowing for any investment growth or increased contributions to reflect increasing wages, that DC pension would have a fund of around £23,400 by the time Mr N turned 55, £42,900 at 60 or £62,400 at 65. But IFM didn't provide any analysis of whether those funds could have supported Mr N in early retirement while taking his guaranteed income from the DB scheme. Also, Mr N could have accessed those funds in a flexible manner had he felt the need to. But IFM didn't refer to this income at all in

its suitability report. So I don't think IFM presented all the information Mr N needed in order to make a fully informed decision.

Plus there's very little analysis within IFM's suitability report which shows how Mr N could meet his income needs. IFM did include a graph showing Mr N taking income from a personal pension by drawdown from age 60. It shows that the fund would sustain Mr N past his life expectancy. But that model is based on Mr N taking the same sum as he could take from the BPS scheme. Those are from figures IFM has calculated itself and not from a TVAS. It shows Mr N taking an income of around £7,600 a year and TFC of £50,000. And while IFM said the graph was for illustration purposes only I don't find it helpful. First it's based on BPS figures, which IFM had already acknowledged wouldn't be accurate. Second, the graph is supposed to represent "today's" figures, that is the sums at the time that IFM gave its advice without allowing for investment growth or indexation. But the starting figure in the graph would appear to be around £360,000, whereas Mr N's CETV was £337,000. But it hasn't explained the increase in the starting point in its suitability report. So I don't find it helpful.

There is a cashflow model elsewhere on the file, which shows that Mr N could take an income of £19,000 a year from age 55, which if he reduced once his state pension became payable at age 67, would last him beyond his life expectancy. But while it's possible that IFM discussed this model with him in person, there's no reference to it whatsoever within IFM's suitability report. So it's not clear whether Mr N ever had sight of it or if this is something IFM produced when considering its response to the complaint. Also, the model doesn't allow for any reduction for Mr N taking a TFC lump sum, which is something he said was important to him when he completed the fact-find. And that would, most likely, have reduced the amount remaining in the fund by 25% overnight. In turn that would have reduced the gains made from any subsequent investment growth. And those things could have meant that the fund would be depleted far sooner. So I don't think the model is reliable. And, given IFM hasn't made any reference to it in its suitability report, it isn't something that Mr N would have the opportunity to consider in any detail. It follows that I don't think it justifies IFM's recommendation to transfer.

That said, it's true to say that Mr N couldn't have had the same level of flexible access to his DB funds as he could from a personal pension. While he could have chosen to take those early, if he'd wanted to take TFC, then he would have had to take that at the same time as drawing a regular income from his pension. Whereas the personal pension would allow him to draw down funds as he saw fit. But while I can see why that might have been an attractive prospect to him, I'm not persuaded that Mr N had any concrete need to vary his income throughout retirement. So while the option of drawing his income flexibly might seem like something that would be nice to have, I can't see that Mr N had any genuine need for that flexibility that would be worth giving up guaranteed benefits for at the time that IFM gave its advice.

### *Death benefits*

Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer through a personal pension is generally an attractive feature to consumers. That's because whatever was left within Mr N's personal pension at the date of his death would be passed on to his family. And, if that happened before his retirement or soon after, then that would likely be a significant sum. In contrast the DB scheme or PPF would pay Mr N's wife half of his yearly pension after he died. And that pension would die with her. So it couldn't be left as a legacy for family.

But whilst I appreciate death benefits are important to consumers and Mr N 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 N about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. It's not intended to provide a legacy for loved ones following death.

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

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

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

### *Control and uncertainty*

Mr N ticked boxes in the fact-find questionnaire to say that he wanted to take control of his pension to ensure its security. But I think IFM overstated any wish Mr N's had to control his pension. There's no evidence that Mr N was a particularly experienced investor and I can't see that he had an interest in or the knowledge to be able to manage his pension funds on his own. Indeed he would be paying IFM a proportion of his pension fund in order for it to do that for him. So, I don't think that this was a genuine objective for Mr N – it was simply a consequence of transferring away from his DB scheme.

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

I understand that there will be instances where a client seeks financial advice with preconceived notions or concerns about the financial health of an employer or pension scheme. And Mr N might well have been leaning towards transferring when he sought advice. But IFM was tasked with rationally addressing Mr N's concerns and providing an appropriately balanced view of all the available options. And in order to recommend that

Mr N should transfer out of his DB scheme IFM needed to be able to clearly demonstrate that doing so was in his best interests.

When Mr N approached IFM there was still the possibility that his pension could move to the PPF. And the BSPS2 had still not been confirmed. But, as I've indicated above, by that time, and given the recent developments, it was more likely than not that the BSPS2 would go ahead. Indeed it's notable that IFM's suitability report did comment that it was "expected" that the BSPS2 would be set up, so Mr N's choices were between the BSPS2, the PPF or a transfer to a personal pension.

Further, even if Mr N remained concerned about the possibility, even if it was a slim one, of the BSPS2 not happening or itself moving into the PPF at a later date, I think IFM should have addressed that concern. A move to the PPF would mean, on a general basis, a reduction of around 10% in retirement income and less generous yearly indexed pension increases. But the 10% reduction didn't necessarily mean Mr N would be worse off. As I've already said, for those taking early retirement the PPF could have been more beneficial to them.

So I don't think any concerns Mr N had about the possibility of his pension funds moving to the PPF was sufficient reason to justify transferring out of the DB environment. That's because to do so would unnecessarily expose those funds to the volatilities and risks of the investment markets. It follows that I don't think those concerns should have led to IFM recommending Mr N transfer out of the DB scheme altogether.

*Would Mr N have opted into the BSPS2?*

As I've already said the BSPS2 wasn't established when IFM gave its advice. And, as indicated above, I think IFM should have deferred giving Mr N advice until more about the BSPS2 was known. Had it done so it could have advised Mr N after the DB trustees had sent Mr N his "time to choose" pack. The trustees sent those packs in October 2017. They contained a comparison of benefits between the BSPS2 and the PPF. They gave members three options:

- To stay in the BSPS and move with it to the PPF.
- To opt to move their benefits to the BSPS2.
- To transfer out of the scheme and into a private arrangement.

For the reasons given above I don't think a transfer to a personal pension was in Mr N's best interests. That would have left him with a choice between opting for the BSPS2 or a move to the PPF. The BSPS2 had, on the whole, more generous benefits than the PPF. Also by opting into the BSPS2, Mr N would have kept the option to transfer out of that scheme nearer to his retirement age if that was what he decided to do. So, had IFM deferred its advice until after the BSPS2 information was known, I think it should have advised Mr N to opt into the BSPS2. I think Mr N would have accepted that advice.

### *Summary*

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

IFM was in a good position to have analysed, tested, challenged and advised Mr N about what was in his best interests for retirement planning. It knows valuable pension pots like Mr N's DB scheme were paid into with the intention of providing for retirement. And

ultimately, I don't think the advice IFM gave to Mr N was suitable. He was giving up a guaranteed, risk-free and increasing income from the DB scheme. By transferring to a personal pension Mr N was, in my view, putting those funds at risk unnecessarily and was likely to obtain lower retirement benefits. And I don't think there were any other particular reasons which would justify the transfer and outweigh this.

So, I don't think it was in Mr N's best interests for him to transfer his DB funds to a personal pension. Instead, I think IFM should have advised him to remain within the DB environment and opt into the BSPS2.

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

It follows that I don't think IFM's advice to Mr N to transfer out of his DB scheme was suitable for him. So, I think IFM should compensate Mr N for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Also, as I think that learning that he might have unnecessarily put his pension funds at risk was a source of distress and inconvenience for Mr N, I think IFM should also pay him £250 to address that.

### **Putting things right**

A fair and reasonable outcome would be for IFM to put Mr N, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr N would have most likely remained in the DB scheme and then opted into the BSPS2 if IFM had given suitable advice.

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 BPS-specific redress calculator to calculate the redress. If IFM doesn't yet have access to the calculator it should contact the supervision department of the FCA to seek access to it as soon as possible. A copy of the BPS calculator output should be sent to Mr N's representative and the Financial Ombudsman Service upon completion of the calculation together with supporting evidence of what IFM based the inputs into the calculator on.

For clarity, Mr N has not yet retired, and – as far as I'm aware – he has no plans to do so at present. So, compensation should be based on the scheme's normal retirement age of 65, 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 PS22/13 and DISP App 4. In accordance with the regulator's expectations, this should

be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr N' acceptance of the decision.

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

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

Redress paid to Mr N as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, IFM may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr N'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.

In addition, IFM should pay Mr N £250 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**

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

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

If Mr N 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 N can accept my decision and go to court to ask for the balance. Mr N 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 N to accept or reject my decision before 1 November 2023.

Joe Scott  
**Ombudsman**