DRN-3763735

The complaint

Mr M complained that he was given unsuitable advice to transfer his defined benefit (DB) British Steel Pension Scheme (BSPS), to a type of personal pension plan, in 2017.

Inspirational Financial Management Ltd is responsible for answering this complaint and so to keep things consistent, I'll refer mainly to "IFM".

What happened

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

In May 2017, the Pension Protection Fund (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 M's employer would be set up – the BSPS2.

In October 2017, members of the BSPS were sent a "Time to Choose" letter which gave them the options 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 choices was 11 December 2017 (and was later extended to 22 December 2017).

Mr M was concerned about what some of the early announcements by his employer meant for the security of his preserved benefits in the BSPS. He was unsure what to do and was referred to IFM which is responsible for providing the pension advice. Information gathered about his circumstances and objectives at the time of the recommendation were broadly as follows:

- Mr M was described as being in good health and at the time of the advice he had accrued around 20 years of pension benefits with the BSPS.

- He was 49 years old, married with a child at university. He and Mrs M lived in a home with a mortgage outstanding. Mrs M worked and also had limited pension provision of her own resulting from various employments over the years.

- Mr M earned around £43,000 per year in the steel industry. After all their monthly household expenses, he and Mrs M had some modest disposable income left over. Mr and Mrs M had no existing savings recorded. They also had no other major assets or liabilities recorded.

- The cash equivalent transfer value (CETV) of Mr M's BSPS was approximately £304,177. The normal retirement age (NRA) was 65. Mr M had told the adviser he'd like to retire earlier than this if possible; the age of 60 was mentioned.

IFM set out its advice in a suitability report on 20 July 2017. In this it advised Mr M to transfer out of the BSPS and invest the funds in a type of personal pension plan. IFM said this would allow Mr M to achieve his objectives. Mr M accepted this advice and so transferred out. In late 2021 Mr M complained to IFM about its advice, saying he shouldn't have been advised to transfer out to a personal pension.

Mr M then referred his complaint to our Service in 2022. One of our investigators looked into the complaint and said it should be upheld. IFM didn't respond.

As the complaint couldn't be resolved informally, it's come 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 also 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'). 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.

I have further considered that 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 M's best interests.

I've used all the information we have to consider whether transferring away from the BSPS to a personal pension was in Mr M's best interests.

Having done all this, I'm upholding Mr M's complaint.

Introductory issues

IFM was gathering information and ultimately advised Mr M at a time when there was significant uncertainty and updates being issued about what was happening with the BSPS and the BSPS2. This included confirmation that sponsorship of the BSPS2 was planned, that details of the scheme would follow and that members would have until December 2017 to make a choice.

It was also explained that the expected payment into the BSPS by Mr M's employer was likely to result in an improvement to transfer values and that members with unexpired transfer values would be sent updated valuations – probably improved ones – which would be guaranteed until at least December 2017. A strategic lump sum payment to the BSPS was also confirmed just before IFM gave Mr M advice.

However, IFM proceeded with the advice to Mr M without really accounting for any of this. It didn't delay providing the advice so there were no comparisons carried out of the benefits the BSPS2 would potentially provide. And the advice was based on the CETV Mr M had received in June 2017, which was due to expire in late September 2017.

So, all the ongoing announcements indicated there would be forthcoming information available. In my view this meant that in order to give Mr M enough information to make a fully informed decision about what was in his best interests, I think IFM should have told him to defer making a final decision on possibly transferring away until further details of the BSPS2 were known and revised transfer values received. Transferring out of a DB scheme is a one-off event. Once transferred there's no going back, the benefits of the DB scheme are usually lost forever.

The announcements indicated thus far were that Mr M would be afforded time to think about his options – so the deadline in the original transfer quotation became less relevant. And waiting would've allowed IFM to carry out an analysis of the BSPS2 benefits, and to properly compare these to the alternatives, and base its advice on this. Without doing this, IFM was acting on information which it knew to be limited, so it is difficult to argue that it could properly assess whether a transfer was in Mr M's best interests.

Financial viability

To help demonstrate the limited information available at the time, I've noted the issuing of the transfer analysis document – often referred to as a TVAS - was on 3 August 2017. This TVAS was comparing the pension benefits (as then currently known) with a personal pension fund managed by a major insurer.

However, we know that IFM issued its formal suitability advice on 20 July 2017, so apparently some two weeks *before* the TVAS was even produced. This appears to mean that Mr M had been recommended to transfer *before* the comprehensive analysis had been done. IFM said this anomaly was due to a backlog caused by worried BSPS members seeking advice in high number (and therefore a high volume of TVAS reports).

I'm sure that's right, but of course, it effectively means that IFM recommended to Mr M that he should transfer away from the BSPS without the full analysis to show this was what he really ought to do. IFM said about this, *"we had by then conducted a large number of TVAS reports and comparisons* [for other people] *… and our analysis to date had shown annual investment returns of around 6 – 8% were required in order to match the benefits at 65"*.

To me, all this is evidence of a somewhat cavalier approach to recommending such an important financial transaction to Mr M, although in the event, it doesn't really change anything. That's because IFM referred in its transfer analysis and suitability report to certain 'critical yield' rates. The critical yield is essentially the average annual investment return that would be required on the transfer value - from the time of advice until retirement - to provide the same annuity benefits as the DB scheme. In this case, IFM used the existing scheme (BSPS) for the critical yield comparisons, rather than awaiting the 'new' BSPS2 arrival.

The critical yield comparison was a requirement from the regulator at the time when advising clients on DB transfers. It's also important to point out that the critical yield comparison is only one of a number of different metrics I've used to compare the different schemes. And in my view, these all point one way – that Mr M was probably going to receive lower pension benefits overall, as a result of transferring to a type of personal pension plan. IFM itself also referred several times in the advice to potential growth in the transferred funds, and I think it was trying to show Mr M that transferring away from his DB scheme was much better for 'growth'. I explain further down how the critical yields don't support this.

As I've said above, IFM had already said most of its clients were seeing critical yields of around 6-8%. And in the analysis it eventually published, the critical yield required to match the benefits at the age of 65 in the BSPS, was 7.2%. Compared against the lesser benefits of the PPF, the critical yield was 4.7%. Mr M had apparently expressed a desire to retire early, potentially at 60, but IFM didn't calculate a critical yield for this age. So this too wasn't really giving Mr M the information he needed to make an informed decision.

However, as I'll explain more about later, retirement was still a long way off for Mr M and so I very much doubt whether retiring at 60 was anything more than something he just aspired to, rather than being part of a real plan. He's confirmed this to our Service and I've also noted anomalies on documentation from the time which suggested Mr M might wish to take his pension benefits even earlier. This is because I've seen notes where the adviser said he might access them within five-to-seven years. Mr M would have barely reached his mid-fifties by this point.

However, putting all these inconsistencies aside for a moment, IFM did imply the critical yield rates were, in the view of the adviser, probably unachievable; but it didn't really fully explain why. It also gave Mr M some mixed messages about this as I've seen an email exchange where the adviser told Mr M he could expect growth of around 5% annually. This seems to have been based on recent past performance and also appears at odds with the large insurer's own annual growth assumptions which were much lower than this.

However, to be clear, I too think the critical yields were most likely not achievable viewed through the lens of when the advice was given. I say this with the following in mind.

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, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor.

The relevant discount rate was only 4.3% per year for 15 years to retirement (age 65), which is below all of the critical yield figures. This indicated annual growth potentially below the critical yield rate. For a retirement at 60, I've calculated the discount rate as only 3.8%, again well below the annual growth rate Mr M would need to make transferring financially viable. I've also kept in mind that the regulator's upper projection rate at the time was 8%, the middle projection rate was 5%, and the lower projection rate was 2%. Mr M had a low attitude to risk (ATR), and he himself was told in documentation he received from the personal pension plan fund that the average annual growth in a personal plan might only be around 2.44%. So, if IFM was assuming growth of over 7.2% (the critical yield) over such a long period in the future, this probably wasn't credible.

In relation to the PPF, the critical yields to match the benefits available through the PPF at age 65 were lower. But these yields related to the *reduced* benefits available with the PPF and IFM itself says Mr M wouldn't have wanted to transfer to this scheme. It's also important to remember here that the effect of charges and fees associated with a personal pension such as the one being recommended to Mr M, would have further reduced the likely growth.

I therefore think it's fair to say that from a financial comparison perspective, IFM's own figures, shown in its suitability report and transfer analysis documents, showed that transferring to a personal pension plan would mean Mr M would likely receive lower pension benefits in the longer term, when compared against the BSPS. But as I've said, IFM could have waited and recalculated the comparisons for Mr M when the situation with BSPS2 became clearer – we know this was becoming available at around the time and shortly thereafter.

I've also considered some projections IFM used to help show that if he transferred out to a personal plan, the funds could last Mr M well into retirement. I think it's fair to say these were certainly not comparing like-with-like. What IFM was showing Mr M were comparisons with plans which lacked the guarantees and benefits of a DB scheme. They relied on investment risk which I think was too high, factored in over many years and based on past performance. Some of the scenarios showed Mr M running out of money at certain ages, but his DB scheme would have been guaranteed for life.

Of course, according to IFM, its recommendation that he should transfer out to a personal pension was not wholly based on the financial comparisons with his current scheme alone. Rather, IFM said Mr M also had other reasons to transfer away, so I've thought about all the other considerations which might have meant a transfer was suitable for him, despite providing the overall lower benefits mentioned earlier.

I've considered these below.

Other needs and objectives

I've considered with care everything IFM has said about the rationale for transferring. And I think it's fair to summarise the reasons it set out as being around greater flexibility and meeting some of the aspirations Mr M had for retirement. The suitability report noted, for example, that remaining with a DB scheme would allow Mr M to take early retirement this was *"subject to an early retirement factor."*

I have therefore used all the documents we still have from the advice sessions to summarise the following themes as supporting the recommendation to transfer away. Mr M was asked to fill out a questionnaire about his objectives and priorities, although I think that it's very important to note that the themes on the form were already pre-printed. So the form he was asked to make selections on already assumed a number of areas considered to be of general importance to consumers like Mr M. It invited Mr M to select some. He ticked:

- *"I would like the flexibility, at retirement, to control the way benefits are paid. I would like to make this decision depending on my circumstances at that time.*
- *A higher Tax-Free Cash lump sum would be tax efficient; this is important to me.*
- *I anticipate early retirement and I am happy to accept a lower pension.*
- *I wish to increase death benefits if this does not reduce my own potential retirement benefits.*

- *I am very concerned about my pension and wish to take action to ensure it is secure.*

- *I wish to take action to ensure that my pension fund is removed from the control of my previous [sic] employer*

- *I do not value the guarantee provided by the PPF*

- *Control of my benefits is of paramount importance"*

Because these areas were already pre-determined, it's hard to say how much Mr M considered them to be of importance. They had not come from him, rather they were already on a published list. But I think it's important to say that IFM was being paid for this advice. It's job therefore wasn't to just transact what Mr M might have thought sounded like good ideas. He had every right to expect advice from someone who was qualified and experienced. So IFM's job was to really think about what was in Mr M's best interests. Perhaps more relevant, were the priorities written on the suitability report by the adviser:

- IFM said Mr M required the flexibility to control and tailor the frequency and amount of income he could receive from his pension fund in retirement to suit his circumstances, as opposed to what IFM said was the pre-set income that his DB scheme would provide.

- It also said he wanted to ensure he could retire when he wished, and he didn't want to take the risk of the scheme entering the PPF.

- IFM said he was prepared to accept more risk in return for greater flexibility

I have considered all these issues with care.

- *Retiring early*

I've taken into account that Mr M approached IFM for advice because of the uncertainties he faced with the BSPS. He clearly didn't want to enter the PPF.

However, overall I think the adviser focused heavily on transferring away, rather than starting by assessing whether BSPS2 could meet Mr M's retirement needs and objectives. I think the adviser just promoted the more flexible arrangements which Mr M would find with a personal pension plan.

However, I think it's important to specifically focus for a moment here on Mr M's comparatively young age by pension standards. He was only 49 and in good health. The evidence I've seen here is that Mr M – understandably - had no concrete plans for his retirement. He had only referred to the possibility of retiring at 60, which was clearly aspirational rather than a definite plan. Not much information about Mrs M's situation was collected at the time although I think her job, salary and pension should all have been part of the planning process. But we do know Mr and Mrs M had a mortgage and seemed to have no other sizable savings or investments. Mrs M didn't have a large pension provision. So, at the very least, their overall circumstances provided uncertainty about when retiring realistically might be possible for Mr M.

In my view, this underscores that any formal retirement plans, viewed from the age of 49, were probably still some way off. The adviser should have known this. There was still over 15 years left to when Mr M would be actually contemplating retiring if using his NRA of 65. And even if I did use the age of 60, this was a decade away and there's simply no way he should have been advised to irreversibly move away from a DB scheme just yet. Doing so involved an investment risk which I don't think Mr M was comfortable with – and as I've shown above - would likely mean lower overall financial benefits at retirement.

Even if I were to consider the unlikely scenario that Mr M's retirement hopes were more fixed than the mere aspirations set out by IFM - and he really did comprehensively plan to retire early - I think IFM should have assessed the possibility of achieving this goal whilst being a member of the BSPS2 for example. Early retirement under the BSPS2, or indeed the PPF, would still have been an option for Mr M and IFM should have awaited the details of the new scheme which were being progressed at the time. Retiring early from a DB scheme, such as BSPS2 would simply have meant Mr M's pension benefits would have been somewhat different, due to him accessing the pension earlier and for longer.

I think it's likely IFM also promoted to Mr M that he could access more tax-free cash if he transferred to a personal pension plan. Mr M had selected this area from the pre-determined options list on the questionnaire. It said he'd be able to access 25% of his pension as a lump-sum and then use the remaining funds more flexibly. It's usually the case that more tax-free cash can be accessed from a personal pension when compared against a DB scheme; this is because the values and benefits of the two schemes are calculated differently. But IFM should have been telling Mr M at the time that extra tax-free lump sums being removed from a personal pension, potentially from the age of 60 in his case, also came with consequences in that the amount left for his later retirement years would obviously decrease.

So, whilst I accept the notion of retiring early and / or accessing tax-free cash might have been appealing, this needed to be considered against the other viable options Mr M faced; in my view this included opting for the BSPS2.

- *Flexibility and control*

In a similar vein, IFM basically said he'd be able to select the timing and type of benefits taken at retirement and also vary his retirement income.

However, I can't see that Mr M required flexibility in retirement in the way the adviser suggested. In any event, flexibility was poorly defined by IFM. I therefore think this was no more than a 'stock' objective used to help justify the recommendation to transfer out to a personal plan. For example, I've seen nothing that showed Mr M required changing how his retirement benefits ought to be paid. He already had started a new and more flexible DC pension with his job. I accept this DC pension was only a few months old, but it was being substantially contributed towards by both Mr M and his employer. Mr M would have been able to increase contributions in the years ahead if he felt this was warranted and of course, he still had over 15 years left to run (over 10 years if he did eventually retire early). So, this secondary pension would have contributed towards Mr M obtaining any flexibility he might have needed in the years ahead.

This means I've seen nothing explaining why Mr M wouldn't want to continue with membership of a DB scheme and to use that scheme in exactly the way it was originally intended. Indeed, I think that by retirement, whenever it eventually came, Mr M could have been in an agreeable position. On one hand he'd have an existing DB scheme of considerable value. This would contain all the guarantees and benefits that such schemes normally bring which tend to include a promise to pay a known pension for life. It's fair to say that significant indexation guarantees were going to exist within BSPS2 and the scheme was still underpinned by the PPF. On the other hand, he'd have also built up a new DC scheme over a still significant period of time – up to 15 years. So, if Mr M ever found he needed flexibility, then he'd be able to use the latter, rather than transferring away from the former.

I’ve also seen no credible evidence that Mr M had either the capacity or desire to exercise control over his funds. With his DB scheme, Mr M was being offered the opportunity to transfer to the new BSPS2. It’s true there were some differences in this scheme when compared to the original BSPS, but it remained a DB scheme nonetheless and was run for him by trustees. Mr M himself had limited knowledge and experience of these types of ‘money market’ investments and I think he would have found the complexity, scale and responsibility of managing around £300,000 of transferred funds to be onerous in the years ahead. What I’ve seen tends to show Mr M would have required ongoing financial advice and support, all of which would cost him money which his DB scheme didn’t require from him.

IFM itself set out the estimated pension he’d get under the BSPS. Of course, it’s always difficult to think about what one might need in ‘todays’ money and to then assess whether the projected retirement income would be enough to live on. But in my view, Mr M’s projected DB scheme annual pension was a very reasonable income when comparing against what he might need in retirement.

IFM’s suitability report said, *“your deferred pension available at age 65 currently stands at a full pension of £12,972 a year”* – and – *“based on the current value of your deferred benefits, I estimate that if you were 60 now, the pension available would be around £10,637 per year. The actual figure at 60 will be more than this when making an allowance for inflation but in real terms it will be broadly equivalent to £10,637 now.”* And it certainly isn’t unreasonable to say that by then, Mr M could have built up a meaningful DC fund in his new pension after he and his employer had been contributing for quite a few years. We now know Mrs M also had a number of modest DC pensions of her own.

So, I don’t think there’s anything showing Mr M’s pension entitlements wouldn’t have met his and Mrs M’s anticipated income requirements, without any need to transfer away from the DB scheme. These were BSPS figures, but that doesn’t really matter because current members were given similar estimates about the new scheme (BSPS2) just after the time this advice was being sought. I don’t think IFM adequately explained these things to Mr M as its advice simply focussed on him transferring away and into a personal pension arrangement to obtain flexibility which was poorly defined and which he didn’t need.

I therefore think Mr M’s circumstances here were much more aligned to him transferring to BSPS2 and retiring from that when he felt he was ready to do so. All the evidence pointed to him still being able to potentially retire a little earlier than 65 if he felt he really needed to. Doing this from the position of BSPS2 was possible – there would have been an actuarial reduction involved, depending on his age at the time. But because he also had a smaller ‘second’ DC pension, and Mrs M had som, albeit small, pensions, this supported that strategy in my view.

- *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 BSPS and BSPS2 contained certain benefits payable to a spouse if Mr M died. Mr M was married and so in my view this represented a good benefit. Conversely, the adviser told Mr M that he’d be able to pass on the *whole* value of a personal pension if he died, potentially tax-free, to anyone he nominated. This was listed under the heading, *“Recommended Alternative”*.

But whilst I appreciate death benefits are important to consumers, and Mr M might have thought it was a good idea to transfer the BSPS to a personal pension because of this, the priority here was to advise him 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 M was prepared to accept a lower retirement income in exchange for different death benefits.

Mr M was only 49 and in good health. An obvious drawback with a personal plan's death benefits is that the amount left to pass on – to anyone – may be substantially reduced as the pensioner starts to withdraw his or her retirement income. To this end, if Mr M had lived a long life there could be nothing left at all in his personal pension plan.

Although I've questioned the ability to forecast an early retirement whilst still so young, there's no real doubt that retiring at 60 was at least mentioned – IFM's defence of this complaint is effectively predicated on this. The adviser should have therefore additionally known that a healthy male retiring at 60 would likely have many years ahead in which he would be drawing down his pension funds thus leaving very little left to pass on to someone.

I think life insurance was probably discussed in this case and I've noted that whilst employed, Mr M had some death in service protection. But again, the adviser failed to present all the relevant options about insurance to Mr M, because they were wholly focussed on transferring him away from a DB scheme and into a personal pension plan. I don't think this was good advice or advice that was in Mr M's best interests.

I say this because if Mr M died, the spouse's pension with BSPS2 was guaranteed for Mrs M's whole life. Also, at 49 years old, a modest 'term' life insurance policy may have still been a reasonably affordable product for Mr M if he really did insist on leaving a lump-sum (rather than an annual pension) legacy for Mrs M, or indeed anyone else such as a child. It also doesn't appear that IFM took into account the fact that Mr M could have nominated a beneficiary of any funds remaining in his 'new' DC scheme. Therefore, to that end, Mr M already had plenty of options ensuring part of his pension wouldn't die with him.

Overall, in this case I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr M. I think this objective, listed as it was in the suitability report, was no more than a generic comment and not meaningful to Mr M's situation.

Concerns over financial stability of the DB scheme

IFM said Mr M wanted to break ties with British Steel and it provided this as part of the rationale for recommending a transfer away. However, there's simply no evidence this was a genuine reason to transfer to a personal pension plan. The box Mr M appears to have ticked in the 'fact-find' which relates to this point is a pre-populated one and I think this waters down its relevance.

Even so, I can understand that when Mr M met with IFM he may have been concerned about the overall financial stability of the BSPS pension. Lots of his former colleagues at the time were considering transferring out of the scheme and he may have worried that his pension could end up in the PPF. If the scheme did end up moving to the PPF, I think the adviser should have explained that this was not as concerning as Mr M thought. He was still unlikely to match, let alone exceed, the benefits available to him through the PPF if he transferred out to a personal pension plan. I don't think that this was properly explained to him. So, I don't think that these concerns should have led to IFM's recommendation to Mr M to transfer out of the DB scheme altogether.

Suitability of investments

IFM recommended that Mr M invest his funds in a personal pension. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr M and I don’t think he would’ve insisted on transferring out of the scheme if clear advice had been given to him, it follows that I don’t need to consider the suitability of the investment recommendation. This is because he should have been advised not to transfer and so the investment in the new funds wouldn’t have arisen if suitable advice had been given.

Summary

I don’t think the advice given to Mr M was suitable.

I accept that Mr M entered into this advice worried about the future and to a degree, he portrayed the BSPS and BSPS2 in a negative way. However, as I’ve said, as a regulated adviser being paid for this advice, IFM’s job was to provide information and advice that was in Mr M’s best interests. Instead of assessing whether Mr M might meet his retirement objectives by becoming a member of BSPS2, the adviser focussed wholly on transferring away.

This meant Mr M was giving up a guaranteed, risk-free and increasing income within the BSPS2. By transferring to a personal pension, the evidence shows he was likely to obtain lower retirement benefits. IFM gave mixed messages about this which I can see Mr M found confusing.

I also don’t think there were any other particular reasons which would justify the transfer and outweigh this. The implication that Mr M was certain to retire early wasn’t borne out by the evidence. Neither was his apparent needs for flexibility and control of his funds, moving forward. These things weren’t properly defined and like the advice around death benefits, they represented nothing more than ‘stock’ objectives used to justify the transfer-out recommendation.

So, I don’t think it was in Mr M’s best interests for him to transfer his DB scheme to a personal pension when he had the opportunity soon of opting into the BSPS2. I also don't think that it was in his interest to accept the reduction in benefits he would have faced by the scheme entering the PPF. Doing this wouldn't be offset by the more favourable reduction for early retirement. By opting into the BSPS2, Mr M would have retained the ability to transfer out of the scheme nearer to his retirement age if he really needed to. The annual indexation of his pension when in payment was also more advantageous under the BSPS2.

On this basis, I think IFM should have taken a short time to consider all the changes in the BSPS and then duly advised Mr M to opt into the BSPS2.

I have considered, given the circumstances of the time, whether Mr M would have transferred to a personal pension in any event. I accept that IFM disclosed some of the risks of transferring to Mr M, and provided him with a certain amount of information. But ultimately it advised Mr M to transfer out, and I think Mr M relied on that advice.

I’m not persuaded that Mr M would have insisted on transferring out of the DB scheme, against IFM’s advice. I say this because Mr M was an inexperienced investor and this pension accounted for most of his retirement provision at the time. So, if IFM had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn’t in his best interests, I think he would have accepted that advice.

In light of the above, I think IFM should compensate Mr M for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Putting things right

A fair and reasonable outcome would be for the business to put Mr M, as far as possible, into the position he would now be in but for IFM's unsuitable advice. I consider Mr M would have most likely opted to join the BSPS2, rather than transfer to the personal pension if he'd been given suitable advice and compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance. IFM should use the benefits offered by BSPS2 for comparison purposes.

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 M and our Service upon completion of the calculation together with supporting evidence of what the business based the inputs into the calculator on.

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 M'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 M redress as a cash lump sum payment,
- explain to Mr M 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 the redress prudently is to use it to augment their DC pension
- offer to calculate how much of any redress Mr M receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr M accepts IFM's offer to calculate how much of the redress could be augmented, request the necessary information and not charge Mr M 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 M's end of year tax position.

Redress paid to Mr M 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 M'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 £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.

This pension at the time represented nearly all of Mr M's retirement provision. I believe the uncertainty and worrying impact of this unsuitable advice caused him distress and inconvenience. I therefore also order IFM to pay an additional £250 to Mr M.

My final decision

Determination and money award: I am upholding this complaint and I now direct Inspirational Financial Management Ltd to pay Mr M 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 M the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr M.

If Mr M accepts my final decision, the money award becomes binding on Inspirational Financial Management Ltd.

My recommendation would not be binding. Further, it's unlikely that Mr M can accept my decision and go to court to ask for the balance. Mr M 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 M to accept or reject my decision before 5 October 2023.

Michael Campbell
Ombudsman