DRN-3764862

The complaint

Mr T 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 to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

In March 2016, Mr T's employer announced that it would be examining options to restructure its business, including decoupling the BSPS (the employers' DB scheme) from the company. The consultation with members referred to possible outcomes regarding their preserved benefits, which included transferring the scheme to the Pension Protection Fund ('PPF'), or a new defined-benefit scheme ('BSPS2'). Alternatively, members were informed they could transfer their benefits to a private pension arrangement.

Mr T was concerned about what the recent announcements by his employer meant for the security of his DB scheme, so he sought advice. In September 2017, following an introduction from another financial advice firm, Mr T met with IFM. It completed a financial planning questionnaire with him to gather information about his circumstances and objectives. Amongst other things this recorded that Mr T was aged 50; he was working full-time; he was married and had two dependent children; he owned his own home with an outstanding mortgage of around £37,000 which was offset with savings of the same amount; and he had investment income from ISAs of around £1,000 a year. IFM also carried out an assessment of Mr T's attitude to risk, which it deemed to be 'balanced'.

On 20 September 2017, IFM advised Mr T to transfer his pension benefits into a personal pension and invest the proceeds within a managed portfolio of investments which was deemed to be of a cautious approach to risk according to the provider's fund factsheet. In summary the suitability report said the reasons for this recommendation were to provide Mr T with flexibility and control over taking his retirement benefits and to enable Mr T to retire when he wanted to and not take the risk of having restrictions in doing so when the scheme entered the PPF or became the new BSPS.

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 choice was 11 December 2017 (and was later extended to 22 December 2017).

Mr T accepted the recommendation and in November 2017 around £456,000 (after IFM's fee was deducted) was received into the new personal pension. I note Mr T signed and returned the suitability report in December 2017 after the transfer had completed.

Mr T complained to IFM in 2021 about the suitability of the transfer advice because he'd received a letter from the regulator, which said he might have received unsuitable advice to transfer out of the BSPS.

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

- Sufficient information was gathered about Mr T's general attitudes, beliefs, opinions, feelings in respect of his circumstances and his goals.
- Mr T's objectives pointed towards a transfer.
- Mr T was 50 and looking to retire at age 55 but he felt age 60 was more realistic. Mr T was debt free and wished to secure death benefits for his family.
- Mr T wanted to access the tax-free cash element early and he wanted flexibility and control rather than being limited by scheme rules or those of the PPF.
- Mr T had the attitude to risk and capacity for loss to transfer and make the investments at the required level.

Mr T referred his complaint to our service. An investigator upheld the complaint and required IFM to pay compensation. In summary they said IFM's transfer analysis showed that the growth rate required to match Mr T's existing scheme benefits at age 65 wasn't likely to be achievable. They said no analysis was carried out based on Mr T saying he wanted to retire at 55 or perhaps age 60. And they said IFM should've waited for the BSPS2 details to carry out a meaningful comparison of benefits. They said there was nothing to suggest Mr T needed flexibility – he wasn't certain when he would retire. They said any concerns Mr T had about his employer ought to have been addressed and appropriately managed. They said overall there wasn't sufficient justification for transferring. They said had suitable advice been given Mr T would've remained in the BSPS and then chosen to move to the BSPS2.

IFM accepted the investigator's assessment and it said it was willing to offer compensation.

IFM then sent Mr T an offer of redress, which it said had been carried out in line with regulatory guidance.

Mr T said he didn't agree with the calculations made and challenged some of the assumptions around future adviser charges and the date the loss calculation was carried out.

While IFM maintained the loss calculation was carried out correctly and said Mr T had misunderstood the FCA guidance around the assumptions made in the calculation, it agreed to run the calculation again and provide a new offer of redress.

The investigator wasn't happy with the time it was taking IFM to produce the revised offer, so it said it was referring the complaint for an ombudsman's decision.

Because IFM said that in light of the ombudsman referral it would not reinstate its offer or prepare a revised loss calculation, it falls to me to make a final decision.

What I've decided – and why

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

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Business ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The applicable rules, regulations and requirements

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

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

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

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

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

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for largely the same reasons given by the investigator. My reasons are set out below.

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

Financial viability

IFM carried out a transfer value analysis report (as required by the regulator) showing how much Mr T's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield). And this was based on his existing scheme benefits under the BSPS. But at the time of the written advice, the Regulated Apportionment Arrangement ('RAA') was approved by the Pensions Regulator (under pensions law, a RAA is a restructuring mechanism which allows a financially troubled employer to detach itself from its liabilities in respect of a DB pension scheme.) As a result, scheme members would have a choice - either move into a new scheme (BSPS2) or remain in the existing scheme and move with it to the PPF.

This means that at the time of the advice, basing the analysis on the existing scheme was somewhat redundant - the existing scheme was no longer an option. So analysis of that scheme wasn't helpful to Mr T.
I think it's reasonable to say that, in light of the announcement and knowing that Mr T would be receiving his 'Time to Choose' information in October 2017, IFM should've waited for the details of the new scheme and based the analysis and its advice on the BSPS2 instead. That way Mr T would've had all the relevant information to make a properly informed decision.

I accept that BSPS2 was far from being a certainty at the time of the advice. But the RAA had been formally approved and in my view all of the available information form the scheme trustees indicated that the new scheme would go ahead. So I still think IFM should've waited and taken the benefits available to Mr T through the new BSPS2 into account in formulating its advice, so that he was able to make a properly informed decision.

The advice was given during the period when the Financial Ombudsman Service was publishing 'discount rates' on our website for use in loss assessments where a complaint about a past pension transfer was being upheld. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, I consider they provide a useful indication of what growth rates would have been considered reasonably achievable when the advice was given in this case.

Mr T was 50 at the time of the advice and it's recorded that he ideally wanted to retire at 55, but 60 was more realistic. For some reason IFM didn't base its analysis on the retirement ages Mr T indicated were relevant to him – it was only based on the scheme's normal retirement age of 65. The critical yield required to match Mr T's benefits under the existing BSPS at age 65 was 6.8% (I assume based on him taking a full pension.) No figure was produced based on Mr T taking a cash lump sum and a reduced pension. The critical yield to match the benefits available through the PPF at age 65 was quoted as 4% per year – again I assume based on taking a full pension.

Despite the figure of 6.8% quoted in the TVAS report, I can see the suitability report referred to a figure of 8%. It's not clear to me what this figure relates to or why it is different from the TVAS. In any event, as I've said above, Mr T remaining in the existing BSPS wasn't an option at this time, so IFM should've waited until details of the BSPS2 were provided and produced the critical yields applicable to the BSPS2 benefits instead. The lower annual increases under the BSPS2 would've likely decreased the critical yields somewhat. But I still think they would've likely been higher than those reflecting the PPF benefits. Notwithstanding this, because IFM only produced analysis based on a retirement age of 65 this was already unhelpful for Mr T in making an informed decision.

Nevertheless, this compares with the discount rate of 4.2% per year for 14 years to retirement in this case. For further comparison, the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

I've taken this into account, along with the composition of assets in the discount rate, Mr T's 'balanced' attitude to risk and also the term to retirement. In my view there would be little point in Mr T giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme. But here, the lowest of the two critical yield figures was 6.8% through the existing scheme and 4% through the PPF.

If Mr T were to opt into the BSPS2 and take the same benefits at 65, I think the critical yield would've been somewhere between these two figures, but likely closer to the existing scheme of 6.8%. Given this was above both the discount rate and the regulator's middle projection rate, I think Mr T was most likely to receive benefits of a lower overall value than those provided by the BSPS2 if he transferred to a personal pension, as a result of investing in line with a balanced attitude to risk.

In my view, to have come close to achieving the level of growth required to exceed the benefits provided by the BSPS2 if he transferred to a personal pension, would've required Mr T to take a higher level of investment risk than he indicated he was prepared to take. And even then I think he'd still be no better off as a result of transferring.

I'm mindful too that Mr T's ultimate destination for his transferred benefits was in a managed investment portfolio that was considered to be a 'cautious' risk profile according to the provider's factsheet. Given this, I think the expected investment returns would be lower than a comparable 'balanced' risk profile investment from the same provider. I think this further supports the view that a transfer to a personal pension arrangement was not financially viable in this case.

If the BSPS2 hadn't gone ahead, Mr T would've moved with the scheme to the PPF. As I said above, no critical yield was produced based on Mr T's preferred retirement age. But at 65 it was 4% - so at age 60 it was likely to be higher. While for age 65 this is slightly lower than the discount rate and lower than the regulator's middle projection rate, I think even based on a retirement age of 65 it seems likely to me that the opportunity to improve on the benefits provided by the PPF was limited if Mr T transferred out of the BSPS.

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

Flexibility and income needs

The primary reason IFM recommended the transfer was because it said it would provide Mr T with flexibility – it would allow him to decide when and how he took his pension benefits and not run the risk of being restricted when the scheme moved to the PPF or it became the new BSPS.

But I don't think Mr T knew with any certainty whether he required flexibility in retirement – in my view the reference to flexibility was simply a feature or a consequence of moving to a personal pension arrangement rather than a genuine objective of Mr T's. And in any event, I don't think he needed to transfer his DB scheme benefits to achieve flexibility, if that's what he ultimately required.

Mr T was 50 at the time of the advice. And while I don't think it would be unreasonable for him to have started to think about his future retirement, there's nothing to show or suggest he had anything that could reasonably be described as concrete plans for retirement. It seems to me that Mr T's indication of ideally wanting to retire at 55 was no different to the answer most working people would give, if asked. I don't think it was driven by any particular plan – hence why I think Mr T indicated a more realistic retirement age of 60.

I accept Mr T might have liked the idea of retiring early, but he already had this option available to him - he didn't have to transfer out to achieve this. I also accept that Mr T couldn't take his DB scheme benefits flexibly. Although he could choose to take a cash lump sum and a reduced annual pension, Mr T had to take those benefits at the same time. But nothing indicates that Mr T had a need to take a cash lump sum and defer taking his income. Mr T said that a lump sum wasn't of primary importance to him and he didn't, for example, need a lump sum to repay his mortgage because he already had savings that he was using to offset the whole outstanding balance. I also haven't seen anything to indicate that Mr T needed to vary his income throughout retirement.

So as I said above, it strikes me that 'flexibility' was simply a feature or a consequence of transferring to a personal arrangement rather than a genuine objective of Mr T's. And so I don't think it was a suitable recommendation for Mr T to give up his guaranteed benefits now when he didn't reasonably know what his needs in retirement would be.

Despite Mr T not having an apparent need for flexibility, importantly he was contributing to his workplace Defined Contribution ('DC') pension scheme, something I'm not persuaded IFM properly considered in terms of the role this could play in Mr T's future income generation – it simply acknowledged he had it quoting the contribution rate. But Mr T was contributing 6% of his salary and his employer was matching it - so a total of 12% of Mr T's salary was being invested here. And while I accept Mr T was likely unhappy with how his employer had handled the BSPS, he'd indicated that he didn't intend to change employer.

So given Mr T had the potential for at least another 10 years' contributions based on his more realistic retirement age of 60, without accounting for growth, salary increases or increases to Mr T's contribution rate, this had the potential to be worth in excess of £70,000.

The nature of a DC scheme means this already provided Mr T with flexibility – he wasn't committed to take these benefits in a set way. Mr T could've taken lump sums as and when required and adjusted the income he took from it according to his needs. So, I think if Mr T retained his DB pension, this combined with his new workplace pension, coupled with his existing savings would've given him the flexibility to retire early - *if* that's what he ultimately decided – and would likely meet his income needs.

So in any event, Mr T didn't need to transfer his DB scheme benefits at this stage to a personal pension arrangement in order to achieve flexibility in retirement. Of course, if Mr T did in fact have a greater need for flexibility beyond that which he already had, I think this could've been explored closer to his intended retirement age. And by opting into the BSPS2, he would've retained the ability to transfer out nearer to retirement, if indeed it was required. This ought to have been clearly explained by IFM.

Turning to Mr T's income need – IFM didn't carry out a detailed income and expenditure in retirement analysis to determine the level of income Mr T would likely need. The fact-find did include a current income and expenditure section, which showed that Mr T's current household expenditure was around £2,100 a month. In its defence of the advice to transfer, IFM has said if both Mr T and his wife retired at 55 their combined retirement income – about £1,100 each a month from their DB schemes – would be a little over half of their working earned income and around £1,800 a month less than they currently spent. But its own analysis showed their expenditure was £2,100 a month which left a surplus. Also I very much doubt Mr T would expect to receive the same level of income in retirement as when he was working. And as I've already said, IFM didn't carry out a detailed analysis of Mr T's likely future income need to establish what was realistic or achievable.

But looking at Mr T's circumstances, I've seen nothing to indicate that he needed variable income. And nothing to indicate that the income from the BSPS2 or the PPF (if the new scheme didn't go ahead) wouldn't have provided Mr T with, at the very least, a solid income foundation upon which his wife's pension income could build upon and his other provision could supplement, to meet his overall income need – particularly at his indicated preferred retirement age of 60.

For example at age 60, IFM's analysis about the existing BSPS's reduction factors suggests Mr T would receive an annual income of just over £15,000 a year. Because of the reduced revaluation factors, under the BSPS2 this figure would be lower, but in my view still close to it. Although this alone wouldn't likely meet Mr T's income need, as I said above, Mr T's wife had a pension which it seems would've provided a similar annual amount at age 60.

So combined these would've provided a useful, solid and guaranteed income foundation. And importantly in my view, a solid foundation upon which Mr T could use his other pension provision (both his quoted small superannuation pension and his workplace DC pension) along with this investment / savings income (or the savings themselves) to likely meet his overall household income need – at least until his and his wife's state pensions became payable. Mr T's DC pension would've likely had a not insignificant amount that he could draw on flexibly, as and when needed, to either top up his income or take a lump sum. I think this route was a far more preferrable one than risking his DB scheme benefits to achieve things.

If the BSPS2 hadn't gone ahead, Mr T would've moved with the scheme to the PPF. And while the income Mr T would receive was likely lower that the pension he'd be entitled to under the BSPS2, I don't think it was substantially lower such that it should've made a difference to the recommendation at this time. As I've said above, Mr T's retirement plans and needs weren't known and he would've had his DC scheme and other means to draw on flexibly until his state pension became payable.

Overall, I think Mr T could've likely met his income needs in retirement through the BSPS2 or the PPF. So, I don't think it was in Mr T's best interests for him to transfer his pension just to have flexibility, that I'm not persuaded he really needed.

Death benefits

While the primary reason for IFM's recommendation was to provide Mr T with flexibility, reference is also made in the advice paperwork to death benefits and Mr T's objective of wanting to ensure his pension didn't die with him allowing it to be fully inherited by his family.

Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer through a personal pension was likely an attractive feature to Mr T. But whilst I appreciate death benefits are important to consumers, and Mr T might have thought it was a good idea to transfer his BSPS benefits to a personal pension because of this, the priority here was to advise Mr T about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement - not as a legacy provision tool. And I don't think IFM explored to what extent Mr T was prepared to accept a lower retirement income in exchange for higher death benefits.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr T was married and so the spouse's pension provided by the DB scheme would've been useful to his spouse if Mr T predeceased her. I don't think IFM made the value of this benefit clear enough to Mr T. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. In any event, IFM should not have encouraged Mr T to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

Furthermore Mr T already had lump sum death benefits available. IFM knew that Mr T had generous death-in-service cover through his employer if he died before retirement – six times his salary. And it also knew that Mr T was paying into his DC scheme and he would've been able to nominate his spouse as beneficiary of this if he hadn't already done so.

But if Mr T genuinely wanted to leave a legacy for his wife / family over and above that which was already available, and which didn't depend on investment returns, I think IFM ought to have explored and ultimately recommended, additional life cover.

The starting point here needn't have been to base the cover on the full transfer value, but ought to have been considered in terms of how much Mr T wanted to leave his family, after taking into account the above existing means. And this could've been explored on a whole of life or term assurance basis, which was likely to be cheaper to provide.

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 T. And I don't think insurance was properly explored as an alternative.

Control and concerns about financial stability of BSPS

Another of IFM's reason for its recommendation was to ensure Mr T could retire when he wanted - he didn't want to take the risk of having restrictions in place when the scheme entered the PPF or it became the new BSPS. Reference was also made to Mr T's concerns about the scheme and that he wanted to break all ties with his employer.

I have no doubt that Mr T was concerned about his pension. His employer had recently made the announcement about its plans for the scheme and he was worried for his pension given the general uncertainty. There was also lots of negative sentiment about the PPF. So it's quite possible that Mr T was leaning towards the decision to transfer because of the concerns he had about his employer and what might happen. But it was IFM's obligation to give Mr T an objective picture and recommend what was in his best interests.

As I've already explained, at the time of the advice it seemed likely the BSPS2 was going to go ahead. So I think IFM should've waited for the details of the BSPS2 so it could properly take the benefits available to Mr T through the BSPS2 into account. And I think this would've alleviated Mr T's concerns about the scheme moving to the PPF.

In any event, even if there was a chance the BSPS2 wouldn't go ahead, and the scheme moved to the PPF, I think that IFM should've reassured Mr T that the scheme moving to the PPF wasn't as concerning as he thought or was led to believe. Despite what IFM indicated, Mr T did still have the option of taking early retirement through the PPF. As I set out Mr T didn't have any real retirement plans at this stage. But I think the income available to Mr T through the PPF would've still provided a solid base, which his other means could supplement to likely meet his income need at retirement. Importantly he was also unlikely to be able to exceed this by transferring out. And although the increases in payment in the PPF were lower, the income was still guaranteed and was not subject to any investment risk. Mr T might not have been able to later transfer out of the PPF – but for the reasons I set out earlier, there was no apparent need for him to do so.

So I don't think that Mr T's concerns should've led to IFM recommending he transfer out of the BSPS altogether.

Summary

I accept that Mr T was likely motivated to transfer out of the BSPS and that his concerns about his employer and the scheme were real. And I don't doubt that the flexibility, control and potential for higher or different death benefits on offer through a personal pension would have sounded like attractive features to Mr T. But IFM wasn't there to just transact what Mr T might have thought he wanted or what sounded attractive. The adviser's role was to really understand what Mr T needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr T was suitable. He was giving up a guaranteed, risk-free and increasing income, whether through the proposed BSPS2 or the PPF, at a time when I don't think his retirement plans were in any way formulated. By transferring to a personal arrangement Mr T was very likely to obtain lower retirement benefits at his retirement age. And in my view, there were no other particular reasons which would justify a transfer and outweigh this. So, I don't think it was in Mr T's best interests for him to transfer his BSPS benefits to a personal pension at this time.

So, I think IFM should've advised Mr T that he should not transfer the benefits of his BSPS to a personal pension arrangement. And if things had happened as they should have and IFM had waited until the details of the BSPS2 were known before formulating its advice, which was in the offing at the time of its written advice, I think it should've recommended that Mr T opt into the BSPS2.

I appreciate that the BSPS2 wasn't guaranteed to go ahead at this time. But as I've already said, I think everything pointed to it going ahead, so this ought to have been the position IFM adopted. Because Mr T's retirement plans were very far from being set in stone, I don't think that it would've been in his interest to accept the reduction in benefits he would've faced by the scheme entering the PPF, as it wouldn't be offset by the more favourable reduction for very early retirement. And by opting into the BSPS2, Mr T would've retained the ability to transfer out of the scheme nearer to his retirement age - if his needs demanded it. Also, Mr T was married and his wife's pension would be set at 50% of his pension at the date of death, and this would be calculated as if no lump sum was taken at retirement (if Mr T chose to do so). The annual indexation of his pension when in payment was also more advantageous under the BSPS2.

Of course, I have to consider whether Mr T would've gone ahead anyway, against IFM's advice.

I've considered this carefully, but I'm not persuaded that Mr T would've insisted on transferring out of the BSPS, against IFM's advice. I say this because, while as I've already said Mr T was likely motivated to transfer when he approached IFM, I still think Mr T would've listened to and followed IFM's advice if things had happened as they should have and it recommended he not transfer out of the scheme. Mr T was not, in my view and experienced investor- while Mr T had ISA investments, he was not someone who possessed the requisite skill, knowledge or confidence to against the advice they were given, particularly in complex pension matters. Mr T's pension accounted for the majority of his private retirement provision. So, if IFM had provided him with clear advice against transferring out of the BSPS, explaining why it wasn't in his best interests, I think he would've accepted that advice.

I'm not persuaded that Mr T's concerns about his employer were so great that he would've insisted on the transfer knowing that a professional adviser, whose expertise he had sought out and was paying for, didn't think it was suitable for him or in his best interests. If IFM had explained that Mr T could likely meet all of his objectives without risking his guaranteed pension, I think that would've carried significant weight. So, I don't think Mr T would've insisted on transferring out of the BSPS against IFM's advice.

In light of the above, I think IFM should compensate Mr T for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology. And as per the above, it is the benefits available to him through the BSPS2 that should be used for comparison purposes.

I can see the investigator also recommended an award of £300 for the distress and inconvenience the matter has caused Mr T. 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 Mr T. Taking everything into account, including that I consider Mr T is now at the age when his retirement provision is of great importance, I think the unsuitable advice has caused him some 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 T, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr T would most likely have 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 T and our Service upon completion of the calculation.

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

Redress paid to Mr T 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 T'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.

IFM should also pay Mr T £300 in recognition of the distress and inconvenience the unsuitable advice has caused him.

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 T 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 T the balance.

If Mr T 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 T can accept my decision and go to court to ask for the balance. Mr T 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 T to accept or reject my decision before 5 July 2023.
Paul Featherstone
Ombudsman