

The complaint

Mr R complains about the suitability of the advice provided by Inspirational Financial Management Ltd (“IFM”) in November 2017 to transfer the value of his safeguarded benefits in the British Steel Pension Scheme (“BSPS”) to a personal pension plan (“PPP”).

Mr R is represented in this complaint by a law firm (“Representative”).

What happened

Mr R’s safeguarded benefits were built up during 8 years and 3 months’ pensionable service in the BSPS between August 1984 and December 1992 while employed by British Steel. The BSPS was a defined benefits (“DB”) pension scheme that provided a guaranteed lifetime income to members. Mr R’s annual scheme pension as at the date of leaving the scheme was £1,815.96. This would be revalued over the term to retirement by a prescribed amount (by September 2017 it had been revalued to £3,555.72).

In March 2016, Tata Steel UK Ltd (“Tata Steel”), which was then the sponsoring employer for the BSPS, announced that it would be examining options to restructure its business including decoupling the scheme from the company. The consultation with members referred to possible outcomes regarding their safeguarded benefits, one of which was a transfer to the Pension Protection Fund (“PPF”) – the PPF is a statutory fund designed to provide compensation to members of DB pension schemes when their employer becomes insolvent. Tata Steel closed the BSPS to further benefit accrual from 31 March 2017.

In May 2017, the PPF announced that the terms of a Regulated Apportionment Arrangement had been agreed. This was approved by The Pensions Regulator in August 2017 – under the announced plans, Tata Steel agreed to set up and sponsor a new DB pension scheme, the BSPS2, subject to certain conditions relating to funding and size being satisfied. Members were told that if the re-structure was approved, they would have three options regarding their safeguarded benefits:

1. Transfer to the PPF;
2. Transfer to the BSPS2; or
3. Transfer to an alternative pension plan such as a PPP

In September 2017, terms of the re-structure were confirmed enabling trustees of the BSPS to start to talk to members in detail. This led to the ‘*Time to Choose*’ communication pack being issued to members, including Mr R, in October 2017. The pack provided more detail about the three options available and was intended to help members choose an option.

Mr R was concerned about what the announced changes meant for the security of his safeguarded benefits and wanted advice on his options. He contacted IFM for advice. It recorded the following information about Mr R in November 2017:

- He was aged 50, single and in good health. He didn’t have anyone financially dependent on him;

- He was employed on a temporary basis as a health and safety consultant and paid gross annual income of about £60,000. He expected his employment status to change in the foreseeable future but details weren't recorded;
- His assets comprised the residential home (the value wasn't recorded). He didn't have any other savings or investments;
- His liabilities comprised a mortgage on his residential home, the monthly cost of which was £500. The outstanding balance was about £125,000. The remaining term wasn't recorded. He didn't have any other debts or liabilities;
- After paying for bills and essentials, he had surplus disposable income of about £1,500 available every month;
- Other than his safeguarded benefits in the BSPS, the only other pension provision he had was his state pension payable from age 67; and
- He was an inexperienced investor with very little knowledge and experience of investments. On a scale of 1 to 6 where 1 (Risk Averse) was lowest risk and 6 (Aggressive) was highest risk, his risk profile was determined to be 4 or 'Moderate' risk. This was defined as, *"You are happy to take on investment risk and understand that this is crucial in terms of generating long-term return. You are willing to take risk with most of your available assets"*.

IFM's adviser issued his suitability report in November 2017. This explained to Mr R that he had three options regarding his safeguarded benefits, as previously communicated by the BSPS. The BSPS offered Mr R a transfer value of £96,120.98 in respect of his pensionable service if he transferred to a PPP.

It was stated in the suitability report that Mr R's primary objective regarding his safeguarded benefits was to transfer to a PPP to avoid the risk of a transfer to the PPF and to draw benefits flexibly when he retired at age 65. It was noted that due to his limited retirement provision, Mr R didn't plan on retiring earlier than the BSPS normal retirement age of 65. In reference to the critical yield, the adviser stated in the suitability report, *"I can confirm that our analysis to date of the British Steel Scheme has shown that annual investment returns of typically around 6 – 8.0% p.a. are required in order to match the benefits available at 65 from the 'current' British Steel scheme"*.

IFM's adviser discounted the PPF and BSPS2 options and instead recommended that Mr R accept the transfer value of £96,120.98 and transfer to a PPP provided by Prudential for the following reasons:

- *"You imagine you will require flexibility to control and tailor the frequency and amount of income you receive from your pension fund in retirement to suit your circumstances, needs and tax position, as opposed to the pre-set (albeit guaranteed) income that your existing defined benefits pension would provide."*
- *You want to ensure you can retire when you want and do not want to take the risk of having restrictions in place when the scheme enters the PPF or it becomes the 'new' British Steel Pension Scheme.*
- *You are prepared to accept more risk in return for greater flexibility over when and how benefits are withdrawn from your pension fund."*

The costs associated with the recommendation were as follows:

Initial advice charge

- 2.00% (or £2,000) – initial adviser charge for recommendation and implementation

Ongoing annual charges

- 0.65% investment annual management charge deducted from the PPP fund value
- 0.45% platform charge deducted from the PPP fund value
- 0.40% ongoing annual advice charge payable to IFM, deducted from the PPP fund value

Mr R accepted the recommendation, following which the transfer to the PPP was completed. IFM recommended that the PPP fund value be invested in the following funds to align with Mr R's 'Moderate' risk profile:

Fund	Allocation	Estimated annual growth rate before charges
Prufund Cautious	30%	5.50%
Prufund Growth	70%	6.20%
Weighted estimated annual growth rate before charges was 5.99%		

This complaint

During 2022, the Representative, on behalf of Mr R, complained to IFM about the suitability of the pension transfer advice it had given him in 2017. In its view, the pension transfer advice was unsuitable and had caused Mr R to suffer a financial loss.

IFM didn't uphold this complaint. In summary, it stated that Mr R was concerned about the issues surrounding Tata Steel and the security of his safeguarded benefits in the BSPS. It considered that the continuing uncertainty at the time was sufficient reason for Mr R to transfer away so that he could obtain control of his safeguarded benefits and have the ability to draw flexible benefits from his intended retirement age of 65. It was satisfied that it had adhered to and considered relevant FCA rules and guidance including providing Mr R with all the necessary information and risk warnings in good time to be able to make an informed decision. It didn't believe the alternative options of the PPF or BSPS2 could've met Mr R's objectives. In its view, the pension transfer to the PPP was in his best interests and so was therefore suitable.

In October 2022, one of our investigators considered this complaint and recommended that it be upheld because, in his view, IFM failed to demonstrate at the time that transferring to the PPP was clearly in Mr R's best interests compared to the alternative options. He noted that, contrary to the regulator's requirements, IFM had failed to obtain a transfer value analysis system ("TVAS") report before it advised Mr R. He thought suitable advice would've been to transfer to the BSPS2. To put things right, our investigator recommended that IFM carry out a redress calculation in line with the FCA's guidelines on the basis that Mr R transferred to the BSPS2, retired at age 65 and would be a 20% income taxpayer in retirement. In addition, he recommended that IFM pay Mr R £200 compensation for the trouble and upset caused by its unsuitable recommendation.

The Representative, on behalf of Mr R, accepted our investigator's assessment and provided some additional comments about how redress should be calculated. IFM didn't provide a response to our investigator. Since agreement couldn't be reached, this complaint has been referred to me to review and decide. This is the last stage of our process.

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.

IFM's response to this complaint

IFM issued a final response letter to Mr R rejecting this complaint. But it didn't provide a response to our investigator's assessment. It's unclear why. Regardless of its reasons, I've decided that IFM has had sufficient time to respond and provide any additional comments or evidence for me to consider. Based on the available contemporaneous evidence, I'm satisfied that I have sufficient information to be able to decide this complaint.

The FCA's applicable rules and guidance

The below isn't 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

PRIN 9: A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment

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)

COBS 4.2.1R: A firm must ensure that a communication or a financial promotion is fair, clear and not misleading

The suitability rules and guidance that applied when IFM advised Mr R were set out in COBS 9.2. The relevant rules were COBS 9.2.1R and 9.2.2R.

The provision in COBS 19 which specifically relate to a DB pension transfer were as follows:

COBS 19.1.2R required the following:

"A firm must:

(1) compare the benefits likely (on reasonable assumptions) to be paid under a defined benefits pension scheme or other pension scheme with safeguarded benefits with the benefits afforded by a personal pension scheme, stakeholder pension scheme or other pension scheme with flexible benefits, before it advises a retail client to transfer out of a defined benefits pension scheme or other pension scheme with safeguarded benefits;

(2) ensure that that comparison includes enough information for the client to be able to make an informed decision;

(3) give the client a copy of the comparison, drawing the client's attention to the factors that do and do not support the firm's advice, in good time, and in any case no later than when the key features document is provided; and

(4) take reasonable steps to ensure that the client understands the firm's comparison and its advice."

And COBS 19.1.3 G stated:

"In particular, the comparison should:

(1) take into account all of the retail client's relevant circumstances;

(2) have regard to the benefits and options available under the ceding scheme and the effect of replacing them with the benefits and options under the proposed scheme;

(3) explain the assumptions on which it is based and the rates of return that would have to be achieved to replicate the benefits being given up;

(4) be illustrated on rates of return which take into account the likely expected returns of the assets in which the retail client's funds will be invested; and

(5) where an immediate crystallisation of benefits is sought by the retail client prior to the ceding scheme's normal retirement age, compare the benefits available from crystallisation at normal retirement age under that scheme."

Under the heading "Suitability", the following was set out:

COBS 19.1.6G:

"When advising a retail client who is, or is eligible to be, a member of a defined benefits occupational pension scheme or other scheme with safeguarded benefits whether to transfer, convert or opt-out, a firm should start by assuming that a transfer, conversion or opt-out will not be suitable. A firm should only then consider a transfer, conversion or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer, conversion or opt-out is in the client's best interests"

COBS 19.1.7G:

"When a firm advises a retail client on a pension transfer, pension conversion or pension opt-out, it should consider the client's attitude to risk including, where relevant, in relation to the rate of investment growth that would have to be achieved to replicate the benefits being given up."

COBS 19.1.7B:

"In considering whether to make a personal recommendation, a firm should not regard a rate of return which may replicate the benefits being given up from the defined benefits pension scheme or other scheme with safeguarded benefits as sufficient in itself."

COBS 19.1.8G:

“When a firm prepares a suitability report it should include:

(1) a summary of the advantages and disadvantages of its personal recommendation;

(2) an analysis of the financial implications (if the recommendation is to opt-out); and

(3) a summary of any other material information.”

Businesses are required to follow these rules and consider the guidance because the FCA considers safeguarded benefits to be valuable. Based on the above regulatory rules and guidance, businesses advising on pension transfers should start by assuming that the existing DB pension scheme is suitable and to only recommend a transfer, which converts safeguarded benefits into flexible benefits, if it can *clearly* demonstrate it's in their client's best interests.

In assessing the suitability of IFM's advice to Mr R, it's necessary for me to have due regard to the FCA's rules and guidance stated above.

Mr R's situation when IFM advised him

The situation for Mr R wasn't normal because the existing DB pension scheme, the BSPS, was closing. So he was essentially forced to transfer the value of his safeguarded benefits to a new scheme. Three options were available, as stated by the BSPS in its '*Time to Choose*' communication pack and repeated by IFM in its suitability report.

The BSPS was one of the largest DB pension schemes in the UK with approximately 125,000 members. It's undeniable that it was a period of great uncertainty for BSPS members, many of whom had been largely passive pension savers and found themselves having to make major and irreversible choices about their financial futures. I think it's fair to say that many members were in a vulnerable position due to the uncertainty surrounding the future of the BSPS. As a result, I think it was essential for any regulated adviser making a recommendation to a BSPS member to have a detailed understanding of each of the options available and of their customer's personal circumstances.

The PPF and BSPS2 options provided guaranteed lifetime income but there were differences between them for deferred members like Mr R. The PPF was designed to provide members with at least 90% of their starting pension value but the BSPS2 was designed to provide members with 100%. The PPF was likely the better option for unmarried members who expected to retire early or take the maximum tax-free cash available even allowing for the 10% reduction in the starting entitlement. But the BSPS2 was likely the better option for married members or those who expected to draw benefits at or close to the scheme normal retirement age of 65. The BSPS2 provided the potential for discretionary increases to the scheme pension, a higher level of spouse's pension and the option to transfer to a PPP at a later date, if then deemed suitable. The benefits available under the PPP option would be dependent on the performance of underlying investments and annuity rates available at retirement – in other words, there were no guarantees regarding the level of benefits paid.

I don't believe that the circumstances surrounding the BSPS altered the FCA's position or its expectations of firms. Given the FCA's view on safeguarded benefits and what was known at the time, it's my fair and reasonable opinion that IFM should've considered that the BSPS2

was likely to be the better option for Mr R based on his personal circumstances and that he expected to draw benefits at or close to the scheme normal retirement age of 65. And so it's my view that IFM should've only recommended a transfer to the PPP in favour of the BPS2 if it could clearly demonstrate why it was in Mr R's best interests, as referenced in COBS 19.1.6G.

Having considered the evidence, I agree with the investigator's view that IFM's pension transfer advice to Mr R was unsuitable for largely the same reasons. My view can be summarised as follows:

- The primary purpose of a pension is to meet the income needs of an individual during retirement. Mr R's safeguarded benefits, accounting for 8 years and 3 months' pensionable service, represented his most valuable asset. He had limited other assets that could be used to support his retirement income needs. Given the lack of other assets, IFM ought to have recognised that Mr R was likely to be heavily reliant on the value of his safeguarded benefits to generate a minimum level of core income to support his standard of living in retirement until state pension age. Given Mr R's limited capacity for loss, I think it was important not to expose the value of his safeguarded benefits to unnecessary risk by treating flexibility and control as a high priority at the expense of the primary income purpose – unless there was a clearly suitable reason to do so;
- According to the suitability report, Mr R wasn't seeking to retire early. Rather, he anticipated retiring at the scheme normal retirement age of 65. One of the main reasons why IFM recommended the transfer was so that Mr R could draw benefits flexibly when he retired at age 65. But he was then aged 50 and so couldn't access any benefits until age 55 at the earliest under the PPP. In my view, with such a time frame until pension benefits could be accessed, it made the case for a pension transfer at that time – for the sake of achieving flexible benefits in 15 years' time – more difficult to justify;
- It's unclear why Mr R apparently didn't value guaranteed retirement income. It seems he had received guaranteed income all his working life. So I think a guaranteed retirement income from another source such as the BPS2 before state pension age would've been valuable for an individual in his circumstances;
- IFM recorded that Mr R was *“prepared to accept more risk in return for greater flexibility over when and how benefits are withdrawn from your pension fund”*. Flexibility and control might sound attractive, but I can't see that Mr R had any concrete need for it. I'm not persuaded that it was appropriate for an inexperienced investor to relinquish the guarantees attached to his main retirement provision in exchange for more risk so that he could access flexible benefits in 15 years' time. There's no real evidence that Mr R required the flexibility of irregular lump sums or variable income during retirement. But if he did require it, then any flexible needs could've been met by the tax-free cash under the BPS2 when he took benefits at age 65. This doesn't appear to have been adequately considered by IFM;
- Furthermore, Mr R had surplus disposable income of about £1,500 available every month. In my view, it would've made more financial sense to retain some of these additional monies in either a pension, investment or savings account over the 15 year term to age 65 to provide any flexible income or lump sums needs rather than transferring and losing benefit guarantees. There's inadequate evidence that IFM considered this option;
- The further away from retirement an individual is, the harder it is to establish a

realistic income figure. I think that age 50 it would've been difficult to calculate an accurate income figure with the time frame to age 65. IFM failed to obtain the necessary information relating to Mr R's financial situation including his anticipated income and expenditure during retirement when assessing whether it was suitable for him to transfer out of the BSPS to achieve his income need at age 65. There's insufficient evidence to demonstrate why it was in Mr R's best interests to transfer at that time to provide flexible benefits from age 65;

- In its final response letter, IFM commented that the scheme pension was insufficient to support Mr R and that his main retirement provision was going to be his state pension and releasing equity from his residential home. And so it took the position that Mr R could afford to expose the value of his safeguarded benefits to risk because he wasn't going to be relying on it. I agree that, in isolation, the safeguarded benefits were unlikely to provide sufficient retirement income for Mr R. But this didn't mean it was suitable for him to relinquish valuable benefit guarantees in exchange for unlimited downside risk. I think what was important at that stage, bearing in mind Mr R was then aged 50 with limited time to age 65 to recover any losses, was to seek – as much as possible – to preserve any sources of guaranteed retirement income he had;
- Transferring to the PPP led to the investment, inflation and longevity risks associated with his safeguarded benefits being transferred from the scheme to Mr R. Those risks would've been retained by the BSPS2 had he transferred to that scheme – I can't see that there was any compelling reason for Mr R to take on those risks at that time;
- Had IFM advised Mr R to transfer to the BSPS2 he would've maintained safeguarded benefits and retained the option to transfer to a PPP at a later date, if then deemed suitable, when he could immediately access benefits and, crucially, determine his retirement income and lump sum needs with far greater accuracy than at age 50;
- IFM recorded that Mr R was concerned about the security of his safeguarded benefits and so wanted “*control*” over his pension. But he appears to have been a largely passive pension saver up until that point. There's no evidence he had experience of controlling, managing or investing large sums of money. In my view, Mr R had limited knowledge and experience to enable him to understand the risks involved in transferring his safeguarded benefits;
- It was noted that Mr R didn't “*value the guarantee provided by the PPF*” and so was concerned about a transfer to the PPF at a later date. While I understand that he may have been concerned about this, I don't consider a transfer to the PPF was an outcome to avoid. Under the PPF, Mr R would've received a minimum of 90% of his scheme pension. This contrasted with the recommended PPP where there's no promise of a minimum level of benefits payable. If Mr R was concerned about his safeguarded benefits being transferred to the PPF which would result in him losing 10% of the scheme pension, then I question why, as an inexperienced investor, he would accept the risk of transferring to a PPP which exposed his benefits to unlimited downside risks where the loss could be significantly greater than 10%. This doesn't make sense to me;
- There's no evidence that IFM carried out a transfer value analysis (“TVAS”) based on Mr R's specific circumstances in line with COBS 19.1.2R. Rather, in the suitability report, it inexplicably provided a generic critical yield figure. Its adviser stated, “*I can confirm that our analysis to date of the British Steel Scheme has shown that annual investment returns of typically around 6 – 8.0% p.a. are required in order to match*

the benefits available at 65 from the 'current' British Steel scheme". This compared with a discount rate of 4.2% at age 65, as explained by our investigator in his assessment. 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% per year. It's my view that a required investment growth rate ranging between 6.0% to 8.0% was incompatible with Mr R's 'Moderate' risk profile, discount rate and the estimated annual growth rate of 5.99% (before charges) of the recommended investment strategy. I think these factors showed that it was likely Mr R would be financially worse off as a result of the pension transfer;

- In my view, the suitability report failed to meet the fair, clear and not misleading requirements of COBS 4.2.1R. It was generic with templated wording to describe Mr R's objectives with the result that the recommendation wasn't sufficiently tailored to his individual circumstances. I think it lacked sufficient colour and detail. It included a generic rather than specific critical yield figure based on Mr R's circumstances and failed to provide sufficient information on the alternative options to achieve his stated objectives. I think these inadequacies in the suitability report led to him making an uninformed decision to proceed with a pension transfer when this was not in his best interests.

Conclusion

The transfer out of the BPS2 was recommended on the grounds that it would meet Mr R's objectives of income flexibility and control over investment choice. It appears to me that IFM placed greater emphasis on Mr R's objectives, failing to assess whether the pension transfer was in his best interests and whether the objectives could in fact be achieved by transferring to the BPS2.

Overall, I don't think the contemporaneous evidence supports the position as to why Mr R's generic objectives would've been sufficiently compelling reasons for him to relinquish valuable benefit guarantees by transferring to a PPP at that time, especially in view of his good state of health and level of reliance on these monies to provide retirement income. Based on what I've seen, I think IFM failed to give adequate consideration to the risk that Mr R couldn't financially bear the risks involved in the pension transfer.

I haven't seen any evidence that shows the pension transfer to the PPP led to Mr R gaining any clearly defined advantage compared to the alternative option of transferring to the BPS2 at that time. As a result, I think it's fair and reasonable to uphold this complaint.

Putting things right

A fair and reasonable outcome would be for IFM to put Mr R, as far as possible, into the position he would now be in but for the unsuitable advice he was given. My view is aligned with that of our investigator.

Our investigator concluded that, if properly advised, Mr R would've transferred to the BPS2 and his benefits would now be preserved in that scheme. I agree given it was known at the time that at age 65 the BPS2 would provide a higher level of benefits than the PPF. As such, the calculation on the basis of entering the BPS2 should be carried out. For clarity, compensation should be based on the BPS2's normal retirement age of 65 for the reasons explained.

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 the Representative, on behalf of Mr R, and our service upon completion of the calculation.

The 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 R's acceptance of this final decision. The Representative has stated that since the pension transfer, Mr R has transferred the value of his Prudential PPP into another pension plan. Therefore, IFM may require additional actuarial support in line with DISP App 4.2.7G to ensure that the value of Mr R's pension plan is correctly apportioned to reflect the part attributable to the BSPS pension transfer.

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 R redress as a cash lump sum payment,
- explain to Mr R before starting the redress calculation that:
 - its 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 his PPP
- offer to calculate how much of any redress Mr R receives could be augmented rather than receiving it all as a cash lump sum;
- if Mr R accepts IFM's offer to calculate how much of his redress could be augmented, request the necessary information and not charge him 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 R's end of year tax position.

Redress paid to Mr R 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've been taken as tax-free cash and 75% would've been taxed according to Mr R'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 R £200 compensation for the trouble and upset caused by its unsuitable recommendation, as recommended by our investigator.

My final decision

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

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

If Mr R accepts this final decision, the money award becomes binding on Inspirational Financial Management Ltd. My recommendation wouldn't be binding. Further, it's unlikely that Mr R can accept this final decision and go to court to ask for the balance. Mr R may want to consider getting independent legal advice before deciding whether to accept this final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 13 December 2023.

Clint Penfold

Ombudsman