DRN-3827189

The complaint

Mr M complains about the advice given by Inspirational Financial Management ('IFM') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme, the British Steel Pension Scheme ('BSPS') 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 M'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.

In May 2017, the PPF made the announcement that the terms of a Regulated Apportionment Arrangement ('RAA') had been agreed. That announcement said that if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr M's employer would be set up – the BSPS2.

In August 2017, the DB scheme administrators sent Mr M information about his entitlement under one section of his current DB scheme which showed a cash equivalent transfer value ('CETV') of £273,932.21. Further information was sent to Mr M in September 2017 about his entitlement under a second section of his current DB scheme which showed a further CETV of £213,687.88. Mr M had a total of 38 years and 5 months of pensionable service in the DB scheme.

Mr M wasn't sure what to do about his DB pension so he contacted IFM. A meeting took place between Mr M and IFM on 25 September 2017 during which a fact-find was completed to gather information about Mr M's circumstances and objectives. It was noted on the fact-find that Mr M was aged 54, his wife was aged 45 and they had one dependent child aged 10. It was also noted that Mr M earned £40,000 per year and his wife earned £30,000 a year and was a member of her employer's occupational pension scheme. It was further noted that Mr and Mrs M owned their own home on which they had an outstanding mortgage (the outstanding amount and the remaining term were undocumented). Finally, IFM documented that Mr M was now a member of his employer's defined contribution pension scheme to which he contributed 6% of his salary a year and his employer 10%. No savings, investments or assets (aside from their home) were held. IFM also assessed that Mr M had a low attitude to risk ('ATR').

Also on 25 September 2017, IFM provided Mr M with its suitability report in which it recommended that he transfer his BSPS DB pension benefits to a personal pension plan. Mr M's objectives for transferring were documented over both the fact-find and the suitability report. These were that he wanted to retire early at age 55 with a net monthly income of £1,500 and tax-free cash ('TFC') of £80,000 to clear his mortgage. Also Mr M said he had concerns about joining the PPF and the BSPS2 and he preferred to have flexibility and control over his pension benefits. Mr M also said he had concerns about the security of his pension and that he wanted to ensure his pension didn't die with him.

Mr M signed the transfer discharge forms on 25 September 2017,

In October 2017, members of the BSPS were sent a "Time to Choose" letter which gave them three options; to either stay in BSPS and move with it to the PPF, move to the 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 M received a letter dated 13 December 2017 from the provider of his personal pension informing him that his personal pension had been set up with a start date of 11 December 2017 following receipt of his total CETV of £496,552.98.

Mr M retired from work at age 55 and took TFC from his personal pension to repay his mortgage with further funds being taken from the plan to provide him with an income.

On 3 February 2022 Mr M, through his representative, complained to IFM. He said the advice he'd received to transfer his DB scheme had been unsuitable and that he had suffered a loss as a result.

IFM looked into Mr M's complaint but didn't think it had done anything wrong. In its final response letter dated 5 May 2022, IFM said that Mr M had wanted the flexibility to retire earlier than the DB scheme's normal retirement age (of 65) and that having the freedom to control his own pension fund outweighed any guaranteed future pension. IFM also said the flexibility Mr M gained, along with the ability to leave his dependents a lump sum benefit in the event of his death, and the avoidance of his benefits falling into the PPF (with the ensuing loss of any ability to transfer at a later date) were all key motivators for Mr M in deciding to transfer his pension to a personal arrangement.

Unhappy with the outcome of his complaint to IFM, Mr M complained to this service. Our Investigator looked into Mr M's complaint and recommended that it was upheld. In short, our Investigator said he didn't think that IFM's advice was suitable or in Mr M's best interests. Given his early retirement, our Investigator thought that IFM should have advised Mr M to opt into the PPF so he recommended that IFM should establish whether Mr M had suffered a loss as a result of its advice to transfer. The Investigator also recommended that IFM should pay Mr M £300 to address the distress and inconvenience caused by the receipt of unsuitable advice.

IFM didn't respond to our Investigator's findings. Because the complaint was unable to resolved informally it has been passed to me to make a final decision.

What I've decided – and why

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

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

The applicable rules, regulations and requirements

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

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

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

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

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

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

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 M's best interests.

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

- Since 1994 it has been a regulatory requirement that a business advising a consumer about a DB scheme transfer must provide the consumer with a transfer value analysis report ('TVAS'). The TVAS provides the consumer with the annual investment return (also known as the 'critical yield) their transferred fund needs to achieve in order to match, at retirement, the DB scheme benefits they are giving up. This information is vital if the consumer is to understand whether it is in their best interests to give up the guarantees associated with their DB pension simply to achieve, at best, equivalent benefits at retirement. Here however, IFM didn't provide Mr M with this crucial information, in so doing, failing to pay due regard to Mr M's information needs so that he could make a fully informed decision.

- The suitability report IFM provided to Mr M refers in a general way to the TVAS but goes on to dismiss its relevance on the grounds that Mr M wanted to take advantage of the pensions' freedoms available to him rather than purchase an annuity. In the suitability report IFM states that the annual investment returns required to match at age 65 the BSPS benefits Mr M was giving up were 'typically' about 8% a year (and had IFM produced a TVAS, the critical yield for retirement at age 55 was likely to be significantly higher than 'typically 8%'). Further, IFM also said that, based on the then current investment landscape, achieving a return of 8% was probably unrealistic. So as a low-risk investor, Mr M would have needed to take investment risks in excess of those he was comfortable with just to *match* his DB scheme benefits

- And given the discount rate of 3.8% for 10 years to retirement (2.3% for 0 years to retirement) and the regulator's lower projection rate of 2%, I think Mr M was always likely to receive pension benefits from age 65 (and age 55) of a lower value than those he'd have been entitled to under the BSPS2 or the PPF by transferring and investing in line with his attitude to risk. It clearly wasn't in Mr M's best interests to give up the guarantees associated with his DB pension simply to achieve, at best, equivalent benefits at retirement. But here I think he was likely to be substantially worse off by transferring. It follows that I don't consider the transfer to be a financially viable one.

- IFM produced an *'income in retirement'* graph within the suitability report. The chart shows that by taking tax-free cash at age 55 and drawing down an income of £1,500 a month from his transferred pension thereafter Mr M's fund will run out by the time he is aged 89. With no other savings, investments or pension assets (aside from his state pension) the chart shows that Mr M could be left with a significant income shortfall in the latter years of his retirement. I've seen no evidence that this was addressed by IFM when it was advising Mr M. Nor can I see that there was any analysis of Mrs M's pension benefits and how they may contribute to both her and Mr M's retirement income needs.

- By the point IFM was advising Mr M it was a known fact that continuing in BSPS in its existing form wasn't an option, yet IFM based its minimal analysis on a scheme that wasn't set to continue. And whilst the suitability report outlines some of the potential risks associated with transferring, doing so does not make an unsuitable recommendation suitable. Transparency is not the same as suitability.

- IFM has justified the transfer by saying that – financial viability aside – there were other compelling reasons for doing it. One of the reasons was that it allowed Mr M to retire early, access his funds flexibly and repay his mortgage of £80,000. But Mr M didn't need to give up the guaranteed benefits of his DB scheme in order to achieve those things. Part of IFM's role was to provide Mr M with full information about his early retirement entitlements under the alternative BSPS2 and PPF schemes so that he could make a fully informed decision. But IFM didn't do so.

- The topic of early retirement was clearly discussed at the time of the advice and IFM says this was a stated objective of Mr M's. Mr M has since said early retirement was presented to him as benefit of the transfer. He's also said he didn't need to retire early at age 55 and repay his mortgage but acted on the opportunity as presented to him. Mr M says that now he's concerned that he was given the impression by IFM that early retirement was financially viable to him.

- Both the BSPS2 and the PPF would have allowed Mr M to take early retirement although his benefits under those schemes would have been subject to actuarial reductions to reflect the fact that the pension would need to sustain him over a longer period. Unfortunately there's no evidence IFM made this clear to Mr M. Nor did it give him details of his entitlements from these two schemes if he took early retirement (either with or without also taking tax-free cash) nor what critical yields needed to be attained by transferring in order to match their benefits. Thus Mr M had no means of comparing whether transferring his DB scheme to a personal pension compared favourably or not with moving to the BSPS2 or PPF either for retirement at age 55 or at age 65.

- IFM failed to have regard to Mr M's information needs or to communicate information to him in a way that was clear, fair and not misleading. IFM stated in the suitability report that it was unlikely that Mr M would have the option to take benefits from the PPF at age 55 – but this was not the case. Mr M could have taken benefits from the PPF at age 55 had he so wished. And the early retirement factors for both income and for tax-free cash entitlement under the PPF were more favourable than the BSPS2 and IFM should have explained this to Mr M.

- And if early retirement was a genuine goal for Mr M, it wasn't IFM's role just to put in place what Mr M might've thought he wanted. Its role was to fully interrogate his objectives and to advise him on what was in his best interests. But there was a lack of detailed analysis and examination about Mr Ms circumstances, future plans and retirement needs such that IFM could conclude that the transfer was clearly in Mr M's best interests.

- IFM assessed Mr M as being able to accept the risk of the transfer because of the size of his CETV and the potential investment timescale. But I think Mr M had little capacity for loss – this was his main pension – so I don't think he could really tolerate the risk of transferring his DB pension. Further, in transferring his DB scheme, all of Mr M's pension provision was then subject to investment risk whereas by moving to the BSPS2 or PPF, Mr M's benefits would escalate annually.

- Mr M's desire for control over his pension was overstated, he was an inexperienced investor and I can't see that he had an interest in or the knowledge to be able to manage his pension funds on his own. So, I don't think that this was a genuine objective for Mr M – it was simply a consequence of transferring away from his DB scheme.

- Mr M may have legitimately held concerns about his employer and the PPF, but it was IFM's role to objectively address those concerns. At the time of the advice, all signs pointed toward the BSPS2 being established. But even if not, the PPF still provided Mr M with guaranteed income and tax-free cash, and as he retired early, the benefits available to him may have exceeded those under the BSPS2. Mr M could still have achieved his retirement objectives even if his DB scheme moved to the PPF.
- The difference in death benefits from a personal pension weren't worth giving up the safeguarded benefits offered by the DB scheme for nor was it in Mr M's best interests to do so.

- On the fact-find Mr M ticked the box that said he only wished *'to increase death benefits if this does not reduce my own potential retirement benefits'.* So it seems to me that lump sum death benefits weren't a priority for Mr M and definitely not at the expense of his retirement benefits. And given that the transfer wasn't financially viable a reduction in Mr M's retirement benefits was almost certain to ensue but IFM proceeded to advise Mr M to transfer regardless.

- Ultimately IFM should not have encouraged Mr M to prioritise the potential for alternative death benefits through a personal pension over his security in retirement. IFM was tasked with advising Mr M about what was best for his retirement and it's clear that Mr M told IFM that he wasn't prepared to accept a lower retirement income in exchange for higher death benefits. The death benefits of both the BSPS2 and PPF were underplayed. Both offered a spouse's pension which was guaranteed and escalated and which could have been valuable to Mr M's family in the event of his death. The death benefits offered by the personal pension however, were dependent on investment performance and, as the *'income in retirement'* graph shows, there may not have been a large sum left particularly if Mr M lived a long life.

- The process of initial information gathering via the fact-find, the formal recommendation to transfer contained in the suitability report and the signing of the transfer forms all took place on the same day – 25 September 2017. It's reasonable to think that this indicates a pre-conceived notion on the part of IFM that a transfer was in Mr M's best interests as opposed to analysing the information obtained in full before determining the most appropriate advice and recommendation.

Overall, I can't see persuasive reasons why it was clearly in Mr M's best interests to give up his DB benefits and transfer them to a personal pension. And I also haven't seen anything to persuade me that Mr M would've insisted on transferring, against advice to remain in the DB scheme. So, I'm upholding the complaint as I think the advice Mr M received from B was unsuitable for him.

I also agree with our Investigator that learning that he might have put his security in retirement at risk unnecessarily would have been a source of distress and inconvenience for Mr M. To address that I think it's fair that IFM pays him £300 compensation.

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 the unsuitable advice. I consider Mr M would most likely have remained in the occupational pension scheme and moved with it to the PPF 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 M and our Service upon completion of the calculation together with supporting evidence of what Mr M based the inputs into the calculator on.

For clarity, Mr M retired at age 55. So, compensation should be based on him taking benefits at this age.

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:
    - his redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
    - a straightforward way to invest his redress prudently is to use it to augment his 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 his 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.

IFM should also pay Mr M £300 for the trouble and upset its unsuitable advice has caused him.

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

My final decision

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

<u>Recommendation:</u> If the compensation amount exceeds £170,000, I also recommend that Inspirational Financial Management Ltd pays Mr M the balance.

If Mr M 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 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 22 December 2023.

Claire Woollerson
Ombudsman