

## The complaint

Mr S 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 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 S 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 S 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 S 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, which cost around £700 a month; and his objective was to ideally retire at 55 and work full-time in the second job he already did on a part-time basis. IFM also carried out an assessment of Mr S' attitude to risk, which it deemed to be 'low to balanced'.

On 4 October 2017, IFM advised Mr S to transfer his BSPS benefits into a personal pension and invest the proceeds within two investment funds (70/30 split) which IFM deemed matched Mr S' overall attitude to risk. In summary, the suitability report said the reasons for this recommendation were to provide Mr S with flexibility and control over taking his retirement benefits, which he was prepared to take investment risk to achieve, and to enable him to retire when he wanted to and not take the risk of having restrictions in doing so when the scheme either entered the PPF or it became the new BSPS.

Around the same time, 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 S accepted the recommendation and shortly afterwards around £549,000 was received into his new personal pension plan.

Mr S complained to IFM in 2021 about the suitability of the transfer advice. Mr S said he felt he'd been steered to transfer to avoid the PPF.

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

- Sufficient information was gathered about Mr S' general attitudes, beliefs,

opinions and feelings in respect of his circumstances. Mr S' goals were clear.

- Mr S' objectives pointed towards a transfer.
- Mr S was 50 and was looking to access income at 55 to support his proposed change to working full-time in the job he currently worked part-time at.
- Mr S wished to secure death benefits for his family.
- Mr S 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 S had the attitude to risk and capacity for loss to transfer and make the investments at the required level.

Dissatisfied with its response, Mr S referred his complaint to our service. An investigator upheld the complaint and required IFM to pay compensation. In summary they said that while they'd not seen a copy of the transfer analysis carried out by IFM, based on what it said in the suitability report about the likely growth rate required to match Mr S' existing scheme benefits at age 65, the possibility of him improving on his benefits at retirement was unlikely. They said Mr S' plans for early retirement weren't set in stone and as they were five years away, there was no urgent reason to transfer out of the BPS2 this stage. They said any concerns Mr S had about his employer ought to have been addressed and appropriately managed by IFM. And they said death benefits wasn't a reason to transfer. They said, overall there wasn't sufficient justification for transferring. They said had suitable advice been given to Mr S, he ought to have been advised to move his benefits to the BPS2.

IFM disagreed. In summary, the key arguments it made are as follows:

- The fact-find recorded Mr S' intentions to retire at age 55 and pursue a full-time role in his current second job, which is evidence from the time and evidence it was entitled to rely on as being correct.
- The premise of the advice was that Mr S couldn't achieve his objectives if he remained in the DB scheme – either BPS2 or the PPF. Mr S needed to match his current income. Only a transfer allowed him to take the income he needed.
- The purpose of the transfer was not to meet or exceed the BPS2 pension – Mr S said he was happy to accept a lower pension in order to retire early, which was his primary objective.
- Mr S could afford to take the risk with the transfer – by the time the pension might run out, he and his wife would be in receipt of sufficient other pension income.
- Mr S was concerned about the widows pension from the scheme only being £7,000, which was far too low for his wife to live on.
- The BPS2 wasn't guaranteed to go ahead at the time. The suggestion Mr S could've waited to transfer as he was still five years from retirement ignores this fact. If the scheme moved to the PPF, Mr S would not have been able to transfer in the future.

Because the investigator wasn't persuaded to change their opinion, the complaint was passed 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 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.

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

#### *Financial viability*

IFM was required by the regulator to carry out a transfer value analysis report showing how much Mr S' pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield).

Unfortunately while IFM says it carried out this analysis, it hasn't been able to provide us with a copy. The suitability report only refers to general analysis it had carried out on the BSPS. Either way, the suitability report is clear that any analysis was based on the existing scheme benefits under the BSPS. But at the time of the 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 S. I think it's reasonable to say that, in light of the announcement and knowing that Mr S 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 S would've had all the relevant information to make a properly informed decision.

I accept, as IFM has argued, 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 from 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 S 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 after the regulator gave instructions in Final Guidance FG17/9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published by the Financial Ombudsman Service on our website. 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.

Mr S was 50 at the time of the advice and it's recorded that he ideally wanted to retire at 55 and pursue a full-time position in the role he was currently doing on a part-time basis. As I said above, there is no record of the critical yields required to match Mr S' benefits as a result of transferring out and investing his pension benefits in line with his stated attitude to risk. But the suitability report referred to a general critical yield figure of 8%, which I assume was based on a full pension at age 65. The critical yield to match the benefits available through the PPF was quoted as being 4% at age 65 – again I assume based on a full pension. For a retirement age of 55, I think it's reasonable to assume the critical yields would've been higher in this case.

Notwithstanding the fact that IFM's analysis based on a retirement age of 65 was already unhelpful to Mr S given his apparent intended retirement age of 55, as I've said above, Mr S remaining in the existing BSPS wasn't an option at this time. So IFM should've waited until details of the BPS2 were provided and produced the critical yields applicable to the BPS2 benefits instead. The lower annual increases under the BPS2 would've likely decreased the critical yields somewhat. But I still think they would've likely been higher than those reflecting the PPF benefits.

The relevant discount rate closest to when the advice was given which I can refer to was published by the Financial Ombudsman Service for the period before 1 October 2017, and was 4.2% per year for 14 years to retirement (age 65) and 3.0% for four years to retirement (age 55.) I've kept in mind that the regulator's projection rates had also remained unchanged since 2014: the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

I've taken this into account, along with the composition of assets in the discount rate, Mr S' 'low to balanced' attitude to risk and also the term to retirement. In my view there would be little point in Mr S giving up the guarantees available to him through the BSPS only to achieve, at best, the same level of benefits outside the scheme. But here, the quoted critical yields were 8% through the existing scheme and 4% through the PPF.

If Mr S were to opt into the BPS2 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 8%. Given this was significantly above both the discount rate and the regulator's middle projection rate, I think Mr S was most likely to receive benefits of a lower overall value than those provided by the BPS2 if he transferred to a personal pension, as a result of investing in line with a low to balanced attitude to risk. I'm mindful here that as I said above, a retirement age of 55 would've likely seen critical yields in excess of the ones quoted.

In my view, to have come close to achieving the level of growth required would've required Mr S 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. This pension accounted for the majority of Mr S' private retirement income provision, so I don't think his capacity for loss was high.

If the BSPS2 hadn't gone ahead, Mr S would've moved with the scheme to the PPF. As I said above, no critical yield was produced based on Mr S' preferred retirement age. But at 65 it was quoted as being 4% - so at age 55 it was likely to be higher. While 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 S transferred out of the BSPS.

I can see IFM has provided cashflow models which it says shows Mr S would've been able to meet his household income needs despite the high critical yields. I've considered these, but firstly they appear to have been produced when IFM submitted its business file to us. So it doesn't appear these were used as part of the advice process or discussed with Mr S. In any event, the modelling appears to show that, based on Mr S drawing enough money from his pension to maintain the same level of income at 55 when he said he would change jobs, his pension fund would run out around his state pension age. It then appears to show he would be reliant on his and his wife's state pension for more than half of their income need.

As I said, it doesn't appear this information was shared with Mr S at the time of the advice, But regardless, I'm not persuaded it demonstrates the transfer was financially viable or in Mr S' best interests. It also, in my view, somewhat undermines the rationale for transferring to provide lump sum death benefits when it appears there would be very little, if anything left, to pass on to Mr S' family in the event of his death anyway. I'll come back to this later on.

For this reason alone a transfer out of the DB scheme wasn't in Mr 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, as IFM has argued in this case. It says the transfer was not predicated on Mr S trying to beat the benefits available to him through the BSPS. I've considered whether such consideration apply in this case below.

#### *Flexibility and income needs*

The primary reason it appears IFM recommended the transfer was because Mr S couldn't meet his objective of maintaining his standard of living at 55 by remaining in his DB scheme. The recommendation said a transfer would provide Mr S 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 becomes the new BSPS.

But I'm not persuaded that, based on Mr S' recorded objective that 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 S'. I'll explain why.

Mr S was 50 at the time of the advice and it's recorded that his intention was to retire at 55 from his current job and take up a full-time position in the job he was currently doing part-time. IFM says he wanted to maintain his standard of living, so he needed around £26,000 a year from his pension for him to achieve things. And this couldn't be achieved by Mr S remaining in the DB scheme (whether the BSPS2 or the PPF.)

Firstly, while I can see it was Mr S' intention to retire early at 55, the suitability report said: *"You explained to me that you would ideally like to retire around 55 from British Steel and work as a ... from that point."* So it doesn't suggest to me Mr S' plans were set in stone at this stage. There is nothing recorded that Mr S had investigated whether it was possible for him to work full-time in the future. But in any event, I'm mindful that it was still five years away until Mr S might think about actioning things – so I'm not persuaded there was any urgency at this stage for him to give up his guaranteed benefits now when the possibility existed that his plans might change during the intervening five years.

I can see IFM has said that waiting ignores the fact that there were no guarantees the BSPS2 would go ahead as proposed. And if it didn't, Mr S would find himself in the PPF and he would lose his ability to transfer out and achieve his goals. But I think IFM is downplaying the likelihood of the BSPS2 going ahead - as I said earlier on, all of the available information at the time indicated that it would go ahead as proposed. So I don't think these concerns should've led to IFM recommending Mr S transfer out of the DB scheme altogether. In any event as I will go on to explain, I'm not persuaded Mr S need to transfer to achieve things.

In my view, this is all about Mr S' likely future income need and his true income need - it is not about needing flexibility. IFM's advice appears to be based on Mr S needing to maintain his standard of living and to generate the same level of income at 55 as he was earning at the time of the advice. Mr S' annual income was recorded as being around £58,000 from his two jobs and his wife earned around £27,000, so a total household income of around £85,000 a year.

But there's no evidence to indicate that IFM interrogated Mr S' plans to understand whether this was realistic and achievable or indeed whether this was the level of income Mr S truly needed. While I accept it is not uncommon for people to typically live up to their incomes, the income and expenditure IFM recorded in the fact-find for Mr S, shows that his household monthly expenditure was around £3,600 a month. And this left a surplus income of around £1,400 a month. Although the expenditure recorded was not particularly granular in terms of its categories, it nevertheless included Mr S' mortgage payment, his household utility bills, food, clothing and car / travel costs. It also included £1,000 recorded under 'other'.

So on the basis this was a reasonably accurate reflection of Mr S' household expenditure, which it ought to have been given the advice being considered, Mr S' income need appears to have been around £3,600 a month. Mr S might have been spending more now because he was earning more. But it appears his need was in fact lower.

I'm mindful too that Mr S indicated he was prepared to accept a lower pension for the ability to retire early, which suggests he was willing and could adjust his standard of living / budget accordingly. So I'm not persuaded he did need to generate an income £85,000 a year. So on the basis that Mr S did execute his objective at 55 as its recorded he intended, his expected annual income of around £32,000, together with his wife's income of around £27,000 a year, appears to have been sufficient to meet this need.

At some point Mr S' mortgage would be repaid (IFM didn't record the details of this or the repayment date) reducing his expenditure by £700 a month. But even with his mortgage payment included it appears Mr S and his wife's joint earned income might have been sufficient. So it's possible Mr S wouldn't need to touch his pension at 55.

But even if I accept Mr S' income need was greater than this, I still think it's possible that the income from the BSPS2 or the PPF (if the new scheme didn't go ahead) would've provided Mr S with the additional income he needed *if* he decided to execute his plan as he intended. At 55, IFM's analysis using the existing BSPS's reduction factors, suggests Mr S would receive an annual income of around £15,400 a year as a full pension. Because of the

reduced revaluation factors, under the BPS2 this figure would be lower. And if the BPS2 hadn't gone ahead, the income Mr S would receive under the PPF was likely lower than the pension he'd be entitled to under the BPS2. But I don't think either was substantially lower such that it should've made a difference to the recommendation at this time.

With Mr S and his wife's combined earned income plus the pension income from Ms S' DB scheme would take Mr S' total household income to just under £74,500 a year. In my view, this is still a substantial annual income figure and one that I think with proper interrogation and analysis of Mr S' expenditure, and with proper consideration of his willingness to accept a lower pension to be able to achieve things, would've likely met Mr S' true income need.

Furthermore, by retaining the DB scheme, it appears Mr S' overall retirement income once he reached state pension age would be higher. This is because based on IFM's cashflow analysis it provided, Mr S' transferred pension fund would be used up if he accessed what IFM said he needed between age 55 to 67 to maintain an £85,000 income target. Whereas by retaining the DB scheme, this would give Mr S a guaranteed and escalating pension income for life supplemented by his two other smaller workplace pensions, both his and his wife's state pensions plus Mr S' wife's workplace pension.

IFM wasn't there to just facilitate what Mr S said he wanted or he thought he needed. The adviser's role was to really understand what Mr S needed and recommend what was in his best interests. I think part of this was understanding Mr S' true income need and properly exploring the possibility that he could achieve his goals by remaining in the DB scheme. I think the evidence supports the view that Mr S could've likely met his objective and income needs in retirement through the BPS2 or the PPF with closer analysis of his income and expenditure - so I don't think it was in Mr S' best interests to transfer his pension at this stage.

#### *Death benefits*

While the primary reason for IFM's recommendation was to provide Mr S with flexibility, reference is also made in the advice paperwork to Mr S' desire to secure better death benefits for his family – IFM recorded that Mr S thought the scheme's widows pension was too low to protect his young 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 S. But whilst I appreciate death benefits are important to consumers, and Mr S might have thought it was a good idea to transfer his BPS benefits to a personal pension because of this, the priority here was to advise Mr S about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement - not as a legacy provision tool.

I also think the existing death benefits attached to the DB scheme were underplayed. In my view the spouse's pension provided by the DB scheme would've been useful to his spouse if Mr S predeceased her. I don't think IFM made the value of this benefit clear enough to Mr S. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. And as IFM's cashflow analysis shows, there might not be much, if anything left of the fund to pass on anyway. In any event, IFM should not have encouraged Mr S to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

Furthermore Mr S already had lump sum death benefits available. IFM knew that Mr S had generous death-in-service cover through his employer if he died before retirement – six times his salary. And it also knew that Mr S 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 S was genuinely concerned about leaving 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 S 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 S. And I don't think insurance was properly explored as an alternative.

#### *Control and concerns about financial stability of BSPS*

Another of IFM's reasons for its recommendation was to ensure Mr S could retire when he wanted and not take the risk of having restrictions in place when the scheme entered the PPF or it became the new BPS2. Reference was also made to Mr S' concerns about the scheme.

I have no doubt that Mr S 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 S 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 S 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 BPS2 was going to go ahead. So I think IFM should've waited for the details of the BPS2 so it could properly take the benefits available to Mr S through the BPS2 into account. And I think this would've alleviated Mr S' concerns about the scheme moving to the PPF.

In any event, even if there was a chance the BPS2 wouldn't go ahead, and the scheme moved to the PPF, I think that IFM should've reassured Mr S that the scheme moving to the PPF wasn't as concerning as he thought or was led to believe. Despite what IFM indicated, Mr S did still have the option of taking early retirement through the PPF. As I set out above I think the income available to Mr S through the PPF would've still likely provided enough to 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 S 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 S' concerns should've led to IFM recommending he transfer out of the DB scheme altogether.

## Summary

I accept that Mr S 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 S. But as I said earlier on, IFM wasn't there to just transact what Mr S might have thought he wanted. The adviser's role was to really understand what Mr S needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr S was suitable. He was giving up a guaranteed, risk-free and increasing income, whether through the proposed BSPS2 or the PPF. By transferring to a personal arrangement Mr S was very likely to obtain lower retirement benefits and in my view, there were no other particular reasons which would justify a transfer and outweigh this. Mr S shouldn't have been advised to transfer out of the scheme just to have flexibility that it wasn't clear he needed, and the potential for higher death benefits wasn't worth giving up the guarantees associated with his DB scheme. So, I don't think it was in Mr 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 S 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 S 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 I'm not persuaded that Mr S' retirement plans were 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 S would've retained the ability to transfer out of the scheme nearer to his retirement age - if his needs demanded it. Also, Mr S 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 S 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 S would've gone ahead anyway, against IFM's advice.

I've considered this carefully, but I'm not persuaded that Mr S would've insisted on transferring out of the BSPS, against IFM's advice. I say this because, while as I've already said Mr S was likely motivated to transfer when he approached IFM, I still think Mr S 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 S was not, in my view, an experienced investor who possessed the requisite skill, knowledge or confidence to go against the advice they were given, particularly in complex pension matters. Mr S' pension accounted for the majority of his private retirement provision and he wasn't prepared to accept much by way of investment risk. 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 Mr 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 S 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 S would've insisted on transferring out of the BSPS against IFM's advice.

In light of the above, I think IFM should compensate Mr S 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 S. 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 S. Taking everything into account, including that I consider Mr S is now at the age when his retirement provision is of greater 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 S, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr S 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 S and our Service upon completion of the calculation.

For clarity, a change in Mr S' circumstances has meant that, although he has not yet retired, he began taking his pension benefits in 2022 aged 55. So, in the circumstances I consider it is only fair that compensation should be based on Mr S taking benefits at age 55 as this is what has actually happened.

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 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 S redress as a cash lump sum payment,
- explain to Mr S 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 S receives could be augmented rather than receiving it all as a cash lump sum,

- if Mr S accepts IFM's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr S 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 S' end of year tax position.

Redress paid to Mr S 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 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 S £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 S 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 S the balance.

If Mr S 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 S can accept my decision and go to court to ask for the balance. Mr S 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 S to accept or reject my decision before 7 July 2023.

Paul Featherstone  
**Ombudsman**