The complaint

Mr S complains about the advice Inspirational Financial Management Ltd ('IFM') gave to him to transfer the benefits from his defined-benefit ('DB') occupational pension scheme 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')[1], 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 S' employer would be set up – the BSPS2.

In July 2017 the DB scheme administrators sent Mr S details about his current entitlement under the DB scheme including that the fund had a cash equivalent transfer value ('CETV') of £260,270.

Mr S approached a firm of financial advisers (Firm F) for advice. It didn't have the regulator's permission to give pension transfer advice, so it referred Mr S to IFM to give that advice.

On 9 August 2017 IFM met with Mr S. It also asked him to complete a fact-find questionnaire, which he did. Amongst other things, IFM noted that Mr S was aged 46 and in good health. He was in a civil partnership and had one son aged 15. He earned £36,000 a year and his partner £6,000. They had a net monthly income of £2,700 and regular monthly outgoings of £350. Mr S had joined his employer's recently set up defined contribution ('DC') pension scheme. He and his employer were each contributing 6% of his salary towards that. His preferred retirement age was 55. He had a balanced attitude to risk.

Mr S signed the forms to transfer his DB scheme funds to a named personal pension that day.

On 14 August 2017 IFM sent Mr S its suitability report setting out its analysis and reasons for recommending that Mr S transfer his DB funds to the named personal pension. Amongst other things it said that the growth rate required to match the benefits from his BSPS scheme from an alternative arrangement at age 65 (the critical yield) was 6.3%, which it said

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[1] The PPF acts as a 'lifeboat' for insolvent DB pension schemes. It pays compensation to members of eligible schemes for their lifetime. The compensation levels are, generally, around 90% of the level of the original scheme's benefits for deferred pensions. But the PPF's rules and benefits may differ from the original scheme.

was “not unrealistic”. It said the critical yield to match the PPF benefits was 4.1% at age 65. It added that it had recommended a transfer to the named personal pension because:

- Mr S required flexibility to control the amount of income he took from his pension to match his circumstances.
- He wanted to ensure he could retire when he wanted to and didn't want to risk his pension moving to the PPF which would mean “having to work until 65”.
- He was prepared to accept “more risk” in return for greater flexibility over when and how he drew his pension benefits.

On 4 September 2017 IFM obtained a transfer value analysis (TVAS) report confirming the critical yield figures it had given in its suitability report.

In February 2022 Mr S complained, via the Financial Ombudsman Service, that IFM’s advice to transfer might not have been suitable for him. IFM didn’t initially reply to the complaint within the regulator’s prescribed timescales for doing so. Mr S asked us to look into the matter in May 2022.

After we asked IFM for its file it replied to Mr S’ complaint. It didn’t uphold it. It said that at the time Mr S wanted control and flexibility of his pension and to improve the death benefits on offer. It added that his desire for early retirement could “only be achieved by transferring away” from the DB scheme.

One of our investigators looked into Mr S’ complaint. The Investigator didn’t think IFM’s advice was suitable for Mr S. The Investigator recommended that IFM should establish if Mr S had suffered a loss and pay compensation, including £300 to address his distress and inconvenience.

IFM didn’t respond to our Investigator’s complaint assessment so the matter was referred 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 broadly similar reasons to those our investigator gave.

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

IFM's advice process

The regulator required IFM to obtain a transfer value analysis report (TVAS) 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). The TVAS was intended to help IFM and Mr S understand the likelihood of an alternative being financially viable.

In the case of the BSPS matters were complicated because Mr S' employer had begun the process to bring the BSPS to an end. So, unless Mr S opted into the BSPS2, his pension would move to the PPF. But, at the time IFM gave its advice not much was known about the BSPS2 or even if it would go ahead. In those circumstances, given there was a possibility that Mr S' pension could move to the PPF, I would have expected IFM to obtain a TVAS that compared the benefits from both the BSPS and the PPF. And, given Mr S had said that, ideally, he'd like to retire at age 55, the TVAS should have shown critical yields and pension entitlement at ages 55 and the scheme's normal retirement age of 65. Also, as Mr S said in the fact-find that he'd like to take the maximum tax free cash ('TFC') lump sum available, the TVAS should also have shown the critical yields required if Mr S took TFC and if he didn't, for both the BSPS and the PPF at ages 55 and 65.

However, while there is a TVAS on file, it appears that IFM hadn't already obtained this at the time it gave Mr S advice or when it sent him its suitability report. Those events happened on 9 and 14 August 2017. But, there's a note on file which shows that IFM didn't request the TVAS until 31 August 2017 and didn't receive it until 4 September 2017. So it seems unlikely it had access to it when it gave Mr S advice to transfer out of his DB scheme.

I've noted that IFM's suitability report does accurately say what the critical yields would be to match the benefits from the BSPS and PPF at age 65. So, it's apparent IFM obtained those figures at some point before requesting the TVAS, which is held on file. But it doesn't quote what Mr S' actual pension entitlement would be from either scheme, revalued to allow for the relevant indexation, at ages 55 or 65. Neither does it show what Mr S' TFC entitlement would be from either scheme at any age. So I don't think IFM gave Mr S all the information he needed to make an informed decision before it recommended he transfer.

Further it's clear that IFM completed the fact-find with Mr S and made a recommendation for him to transfer his DB funds to the named personal pension on the same day. That was before it had given him any written analysis and recommendations. In fact it didn't send Mr S its suitability report until the following week. So, at the point Mr S accepted IFM's recommendation to transfer there's no compelling evidence he had received any supporting written material at all.

It’s likely IFM would argue that it explained the content of its suitability report to Mr S when it met with him. And, as it believed he was clear about his objectives it put the wheels in motion to sort out the transfer without first putting its detailed analysis to him in writing. But there are errors and omissions in IFM’s suitability report. Most notably, IFM told Mr S that he would lose the option of taking early retirement if his pension went into the PPF. That is plainly wrong. In fact the benefits from the PPF for those taking early retirement and particularly for those wanting to take TFC, are more generous than the benefits from the BSPS (or the BSPS2). So IFM misled Mr S on that point.

Further, regardless that it was aware that Mr S wanted to take early retirement IFM didn’t present him with any figures to show how much an alternative pension would need to grow by to match the benefits from his DB scheme if he did retire early. Similarly it didn’t provide figures if he wanted to take TFC. So it’s unlikely it could have discussed those things with Mr S, as those figures simply don't appear on file. I think those are significant omissions.

Also, IFM appended an illustration from the named personal pension to its suitability report showing what Mr S’ pension might be worth by investing with it. But the illustration shows Mr S taking his pension benefits at age 60. But, as far as I can tell, Mr S hadn't said he wanted to retire at age 60. The two dates on file are for early retirement at age 55 or the scheme’s normal retirement age of 65. So it’s anything but clear why IFM would have requested an illustration at age 60.

It follows that I don’t think IFM communicated with Mr S in a way that was clear, fair and not misleading. Transferring out of a DB scheme is a one-off event. Once transferred there's no going back, so the benefits of the DB scheme are usually lost forever. But in this instance IFM made a recommendation to transfer, without having all the information Mr S needed in order to make an informed decision. And it gave him the forms to sign for the transfer to go ahead, before it had given him sight of any in-depth written analysis of his situation and the reasons for its recommendation. I don't think that was a fair and reasonable manner in which to approach a subject as serious as a transfer from a DB scheme.

I think it could be argued that by failing to gather and present all the information Mr S needed in order to make an informed decision IFM was in breach of COBS rule 9.2.6. That rule says that firms should not make a recommendation to clients where it doesn't have all the necessary information to assess the suitability of its recommendation. And I'm not convinced that IFM had all the information it needed when giving Mr S advice.

Financial viability

When referring to financial viability, I mean how likely it was that Mr S would be better off in terms of retirement income by transferring.

IFM gave its advice 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. I’ll explain that a discount rate is a measure of what an investment is likely to grow at in the future. We find it a useful tool to establish whether an investment is expected to match or exceed the required growth rates to make a DB transfer financially viable. 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 S was 46 at the time of the advice and ideally wanted to retire at 55. But, as I've said above, I don’t have critical yield figures for age 55. At age 65 the critical yield required if Mr S took a full pension from the BSPS was 6.3% a year. The critical yield to match the benefits available through the PPF at age 65 was 4.1%. This compares with the discount rate of 4.4% a year for 18 full years to retirement at age 65. 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' balanced attitude to risk and also the term to retirement. I've noted that while the discount rate was far below the critical yield for Mr S taking his pension from the BSPS at age 65, that wasn't an option open to him.

The discount rate was marginally higher than the critical yield if Mr S took benefits from the PPF at age 65. So there was a potential for him to be slightly better off if he retired at age 65 by transferring than if his pension had gone into the PPF. But there would be little point in Mr S giving up the guarantees available to him through his DB scheme only to achieve a level of benefit outside the scheme that was broadly comparable to what he would receive from remaining in it. That's because, in order for the potential to improve slightly on the PPF benefits, he would need to put those funds at risk. However, given the discount rate was broadly equivalent to the critical yield to match the benefits from the PPF, then the scope for gains was small. And when compared against the BSPS, the suitability report falls someway short showing those benefits were unlikely to be matched.

Further, by transferring from the DB scheme Mr S would have to pay the fees and charges that are required in order to invest in a personal pension. And those would reduce any gains the funds made. Those are not charges he would have had to pay if his funds had remained in the BSPS and moved to the PPF. So, transferring would most likely result in Mr S being worse off in retirement particularly if his fund had an extended period of poor performance or suffered losses.

Also, as I've already said, Mr S' plan was to retire early. So the critical yields would undoubtedly have increased to reflect the shorter period of growth. And, for retirement at age 55 the discount rate falls to 3.5% for eight full years to retirement. I think the critical yield would have been significantly higher than that figure for both the PPF and the BSPS at that age. So I think Mr S was likely to receive benefits of a substantially lower overall value than the DB scheme if he chose to take early retirement, as a result of investing in line with his balanced attitude to risk.

So I don't think a transfer out of the DB scheme was in Mr S' best interests.

Of course financial viability isn't the only consideration when giving transfer advice, as IFM has argued in this case. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered this below. When doing so I've been mindful that IFM's role was to find out what Mr S' wants and needs were and why. Its role wasn't simply to do what he wanted without appropriate analysis and challenge of his motives for doing so.

Flexibility and income needs

It seems the main reasons IFM recommended Mr S transfer was for the opportunity to retire early and to take his pension flexibly. Having considered the evidence, I don't think achieving these goals at the expense of the guaranteed benefits from a DB scheme was in his best interests.

I can fully understand Mr S' wish to retire early. I think most people would say that they would like to retire early if given the chance. I also think most people would understand that having the opportunity to retire early isn't worth compromising their income security for the remainder of their retirement for. It seems to me that this is something Mr S was likely to reassess once he approached age 55. And, I think early retirement was something that was – most likely – nice to have rather than a genuine need for him.

It's notable there's no evidence that IFM analysed what Mr S' income needs in retirement would be and how he would meet those. Mr S' evidence was that he had household outgoings of around £2,350 a month. That included mortgage repayments of £400 a month. IFM didn't record when the mortgage would be repaid, but as the amount outstanding of £25,000 was fairly modest, it's likely Mr S and his partner would have cleared that debt before he turned 55. So, assuming his other outgoings remained the same, he would need income in retirement of around £1,950 a month. That's equivalent to £23,400 a year net, or roughly £26,600 a year gross (in 2017). That was a far higher sum than he was likely to receive from either the BSPS or the PPF. So I think it would have been fair to say that, if Mr S was relying on his DB scheme income alone, he couldn't have afforded to take early retirement at age 55.

It's possible Mr S might have thought he would need far less income in retirement. If he'd repaid his mortgage and his son was no longer dependent on him, that might be a reasonable assumption. But as IFM didn't produce any form of analysis of Mr S' likely income needs either at age 55 or 65, I can't say with any confidence what his income needs would be. But, it seems extremely unlikely that meeting his income needs from a personal pension would be sustainable from age 55. Mr S' life expectancy, according to the Office for National Statistics, was around 79 years old. So Mr S' personal pension fund alone would need to sustain his income needs for 12 years from age 55 to 67, when he could start to receive his state pension. It would then need to support his state pension for the remainder of his life. But IFM hasn't shown how Mr S could achieve that. And if: he lived a long life; took higher sums from his personal pension pot in the early years of his retirement; or his fund suffered losses or a sustained period of poor performance; then it's likely he would deplete the fund before he died and have no pension, outside of his state pension, to live off. Whereas, by remaining in the DB scheme he had a guaranteed income for life.

Further, if Mr S did have a genuine need for early retirement then he might have been better off by opting to allow his pension to move to the PPF. It was well-known that the manner in which the PPF calculates its early retirement factors, including TFC sums, are more generous than in many DB schemes, including the BSPS. In this case IFM hasn't presented the information needed in order to see what Mr S might have been entitled to from the PPF at any age. But, it's likely the PPF would have paid Mr S a handsome TFC amount at age 55. However, rather than putting that to Mr S, as I've said above, IFM, entirely incorrectly, indicated that he couldn't take early retirement from the PPF. So it clearly misled him on that point.

In any event I don't think Mr S had a concrete need to take early retirement. As I've said above I can understand why he would want to retire at age 55. But, for most people, early retirement means a significant drop in income. And that would dramatically reduce most individuals' spending power and lifestyle choices. So, when faced with that prospect at an early retirement age, most people choose not to retire. Instead they opt to continue working to support their current and future lifestyle options. And that's seems to be a more likely prospect for Mr S. But there's no evidence that IFM seriously challenged Mr S' preference for early retirement at age 55. So I don't think it met its obligations to challenge his objectives in light of what he would be giving up.

IFM also said that transferring to a personal pension would allow Mr S to access his funds in the manner he chose. But Mr S didn't need to transfer from his DB scheme in order to be able to have some flexible access to funds. He had started paying into a DC pension that both he and his employer together contributed 12% of his salary to. At that time, that was around £4,320 a year. So, without allowing for Mr S increasing his contributions, his salary growing, or any return on the investment, IFM could have anticipated his DC fund would have grown to around £38,800 by the time he reached 55 or £82,000 by age 65. And Mr S could have accessed those funds in a flexible manner while retaining the guaranteed benefits from his DB scheme had he wanted to. But I can't see that IFM put this prospect to him.

That said, it's true to say that Mr S couldn't have had the same level of flexible access to his DB funds as he could from a personal pension. While he could have chosen to take those early, if he'd wanted to take TFC, then he would have had to take that at the same time as drawing a regular income from his pension. Whereas the personal pension would allow him to draw down funds as he saw fit. But while I can see why that might have been an attractive prospect to him, I'm not persuaded that Mr S had any concrete need to vary his income throughout retirement. So while the option of drawing his income flexibly might seem like something that would be nice to have, I can't see Mr S had any genuine need for flexibility that would be worth giving up guaranteed benefits for at the time that IFM gave its advice.

Death benefits

Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer through a personal pension is generally an attractive feature to consumers. That's because whatever was left within it at the date of Mr S' death would be passed on to his family. And, if that happened before his retirement or soon after, then that would likely be a significant sum.

But whilst I appreciate death benefits are important to consumers and IFM may have used this as a reason to justify its recommendation to transfer, 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. And in this case, Mr S had said that he only wanted to increase death benefits if that didn't reduce his retirement benefits. But, for the reasons given above, I think that he was likely to be worse off in retirement by transferring.

So, 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.

Uncertainty and concerns about the PPF

I'm aware that many BSPS members had serious concerns about the security of their pension pots. The situation was evolving after the BSPS closed in March 2017. There was also some widespread trepidation about what moving pensions to the PPF meant for members. It's also well known that this was a period of uncertainty for people like Mr S. But this only serves to emphasise the need at that time for a balanced assessment of the options available and ultimately the need for suitable advice.

I understand there will be instances where a client seeks financial advice with preconceived notions or concerns about the financial health of an employer or pension scheme. And Mr S might well have been leaning towards transferring when he sought advice. But IFM was tasked with rationally addressing Mr S' concerns and providing an appropriately balanced view of all the available options. And in order to recommend that Mr S should transfer out of his DB scheme IFM needed to be able to clearly demonstrate that doing so was in his best interests.

I've noted that Mr S ticked a box on the fact-find questionnaire to say that he didn't value the guarantees the PPF offered. But I can't see that IFM took any steps to establish why that was or to address his concerns.

A move to the PPF would mean, on a general basis, a reduction of around 10% in retirement income and less generous yearly indexed pension increases. But the 10% reduction didn't apply across the board. I've already said above, for those taking early retirement the PPF could have been more beneficial. But it appears that IFM made little effort to allay Mr S' fears about what a move to the PPF could mean for him. Indeed it seems IFM only added to those concerns by indicating Mr S could not take benefits from the PPF while retiring early. That wasn't the case at all.

That said, even if IFM hadn't misled Mr S about early retirement benefits from the PPF I do understand that the prospect of their pension moving to it was for some people rather daunting. But, the benefits from the PPF were most likely not as significant a reduction as Mr S believed and those benefits were guaranteed. So it's almost certainly the case that a move to the PPF wasn't as detrimental as Mr S thought it might be.

So, I'm not persuaded that the uncertainty Mr S experienced when he entered into the advice process was sufficient reason for IFM to recommend he should transfer his safeguarded benefits from his DB scheme, even one with the possibility of going into the PPF. That's because to do so would unnecessarily expose those funds to the volatilities and risks of the investment markets. It follows that I don't think those concerns should have led to IFM recommending Mr S transfer out of the DB scheme altogether.

Control

IFM said Mr S wanted control over how his pension was invested. Mr S ticked a box on the fact-find questionnaire to say that control of his retirement benefits was of "paramount importance". But Mr S wasn't an experienced investor. So, I can't see that he had an interest in or the knowledge to be able to manage his pension funds on his own. Indeed IFM documented that Mr S intended to pay Firm F a fee for its ongoing advice to help him to do so in the future. And I think his desire for this has been overstated and may not have been a genuine objective.

I think Mr S' desire for control was more linked to the uncertainty about the BSPS. As I've said above it's likely Mr S was concerned about his pension. His employer had been consulting on its plans for the scheme for some time. And there appears to have been a general mistrust and lack of optimism. In Mr S' case, I think that's led him to believe he needed to take control of his pension and was concerned about leaving it in the care of his employer or allowing it to move to the PPF.

But for the reasons I've given above, I don't think Mr S' concerns about the PPF justified a recommendation to transfer. Further the BSPS was being brought to a close. It was IFM's obligation to give Mr S an objective picture and recommend what was in his best interests. And I think that if IFM had carefully explained to him why it was in his best interests to remain within the DB environment it's probable Mr S would have appreciated why that was more advantageous for him than taking control of his pension.

Would Mr S have opted into the BSPS2?

When IFM gave its advice the BSPS2 was still some way from being established. At that time Mr S' only sure option, other than transferring, would have been to allow his fund to move to the PPF. However, shortly after it gave its advice there were further developments with the BSPS2. And, by October 2017, the DB scheme trustees sent its members "time to choose" packs. Those gave members three options:

- To stay in the BSPS and move with it to the PPF.

- To opt to move their benefits to the BSPS2.
- To transfer out of the scheme and into a private arrangement.

By that time, had IFM given suitable advice, Mr S would have known that a transfer away from the DB environment wasn't in his best interests. That would have left a choice between the PPF and the BSPS2. The BSPS2 had, on the whole, more generous benefits than the PPF. Also by opting into the BSPS2, Mr S would have kept the option to transfer out of that scheme nearer to his retirement age if that was what he decided to do. So, had he not already transferred out of the DB scheme, I think Mr S would have chosen to opt into the BSPS2.

Summary

I don't doubt that the flexibility and control on offer through a personal pension would have sounded like attractive features to Mr S. But 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.

IFM was in a good position to have analysed, tested, challenged and advised Mr S about what was in his best interests for retirement planning. It knows valuable pension pots like Mr S' DB scheme were paid into with the intention of providing for retirement. And ultimately, I don't think the advice IFM gave to Mr S was suitable. He was giving up a guaranteed, risk-free and increasing income from the DB scheme. By transferring to a personal pension Mr S was, in my view, likely to obtain lower retirement benefits. And I don't think there were any other particular reasons which would justify the transfer and outweigh this.

So, I don't think it was in Mr S' best interests for him to transfer his DB funds to a personal pension. Instead, I think IFM should have advised Mr S to remain within the DB environment.

Of course, I have to consider whether Mr S would have gone ahead with the transfer anyway if it wasn't for IFM's advice. After thinking about this carefully, I'm not persuaded he would have done so. I accept that Mr S most likely entered into the advice process with an idea he didn't want his pension to enter the PPF and he wanted to take control of it. But he was an inexperienced investor with a balanced attitude to risk. However, he was putting his funds at unnecessary risk by transferring. And his DB pension accounted for the majority of his retirement provision at the time. So, if IFM had given him clear advice against transferring his safeguarded benefits, explaining why it wasn't in his best interests and that he would likely be worse off as a result of doing so, I think he would have accepted that advice.

It follows that I don't think IFM's advice to Mr S to transfer out of his DB scheme was suitable for him. So, I think IFM should compensate Mr S for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Also, as I think that learning that he might have unnecessarily put his pension funds at risk was a source of distress and inconvenience for Mr S, I think IFM should also pay him £300 to address that.

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 have most likely remained in the DB scheme and then opted into the BSPS2 if IFM had given suitable advice.

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. If IFM does not yet have access to the calculator it should contact the supervision department of the FCA to seek access to it as soon as possible. A copy of the BSPS calculator output should be sent to Mr S and the Financial Ombudsman Service upon completion of the calculation together with supporting evidence of what IFM based the inputs into the calculator on.

For clarity, Mr S has not yet retired, and – as far as I'm aware – he has no plans to do so at present. So, compensation should be based on the scheme's normal retirement age of 65, 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 PS22/13 and 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 the 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:
    - 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 personal 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 his 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 his 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 includes compensation in respect of benefits that would otherwise have provided a taxable income. 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.

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 30 October 2023.

Joe Scott
Ombudsman