

The complaint

Mr T 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.

Professional representatives have helped Mr T to bring this complaint. But, for ease of reading, I will refer to the representatives' comments as being Mr T's.

What happened

Mr T was a deferred member of his employer's DB scheme (known as the BSPS).

In March 2016, Mr T's employer announced that it would be examining options to restructure its business, including decoupling its DB scheme from the company. The employer and scheme trustees consulted with the scheme members about the possible outcomes regarding their preserved benefits. The options presented included transferring the scheme to the Pension Protection Fund ('PPF')¹, or a new defined-benefit scheme known as BSPS2. Alternatively, members were informed they could transfer their benefits to a private pension arrangement.

Mr T was concerned about what his employer's announcement meant for the security of his pension. He contacted IFM for advice. In 2017 it completed a fact-find gathering evidence of his circumstances. Amongst other things IFM recorded that Mr T's preferred retirement age was 62.

IFM sent Mr T a suitability report in which it recommended he transfer the benefits from his DB scheme to a named personal pension. Mr T accepted that recommendation. He also transferred funds from some other money purchase schemes into the personal pension.

In November 2021 Mr T complained that IFM's advice wasn't suitable for him.

IFM didn't uphold the complaint. So, Mr T brought it to us. In May 2022 one of our Investigators looked into it. He didn't think IFM's advice was suitable for Mr T. So he said it should compensate Mr T if he had suffered a loss as a result of the advice. Our Investigator also said IFM should pay Mr T £350 to address his distress and inconvenience arising from IFM's unsuitable advice.

IFM accepted our Investigator's assessment of the complaint. It instructed an actuarial firm to act on its behalf to calculate whether Mr T had suffered a loss. As the actuaries were acting as IFM's agents, I will refer to their actions as being IFM's. It noted that Mr T had drawn a tax free pension commencement lump sum (PCLS) from his pension shortly after

¹ 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.

turning 55 years old in October 2021. So IFM said it had calculated compensation as if Mr T had taken his benefits from the BPS2 from October 2021. It said its calculation showed Mr T hadn't suffered a loss. But it offered to pay him £350 for his distress and inconvenience.

Mr T wasn't happy with IFM's approach. Amongst other things he said that while he had taken PCLS he hadn't drawn an income from his pension; he hadn't retired and was still working. So he didn't think it was fair for IFM to use age 55 as his retirement date. He also suggested that it should make a loss calculation based on his DB pension having been transferred to the PPF. He added that IFM hadn't shown that it had taken fund or adviser charges into account in its calculation.

As Mr T wasn't happy with IFM's response to our Investigator's assessment of the complaint, it's been passed to me to decide.

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.

Why I'm not doing an in depth analysis of the suitability of IFM's advice

IFM accepted our Investigator's assessment of the complaint that its advice for Mr T was not suitable. So, as all parties to the complaint are now agreed on that point, I don't intend to provide an analysis of the merits or suitability of IFM's advice. Save to say that I agree with our Investigator's assessment that IFM's advice wasn't suitable for Mr T's circumstances. That's because I think he was likely to be worse off in retirement as a result of the advice, and there were no other compelling reasons for him to transfer his benefits. So, instead I will focus on the matters that remain in dispute.

I'll add that IFM also recommended that Mr T should transfer the funds from certain money purchase pension schemes into the named personal pension. But Mr T hasn't complained about those transfers so I don't intend to comment on those here.

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'); the Conduct of Business Sourcebook ('COBS') and the FCA's handbook rules on how firms should deal with complaints (DISP). 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.

I've also taken into account that DISP App 4.3.16R says that firms must: *presume that a consumer would have taken pension benefits from their defined benefit occupational pension scheme at their normal retirement age.*

However, the provisions of DISP App 4.3.17R says the above won't apply: *where the evidence shows that it is more likely than not that the consumer or a beneficiary would have taken benefits from their defined benefit occupational pension scheme on an alternative date.*

It gives examples of such evidence including:

- Where the consumer has taken an annuity.
- The consumer would have taken early retirement benefits from their DB scheme.
- The firm has written confirmation that the consumer considers themselves to be retired.

Does IFM's redress offer fairly compensate Mr T for the unsuitable advice?

Mr T was concerned about the potential loss of benefits had he allowed his DB pension to move with the existing scheme to the PPF. And I note the Investigator concluded that Mr T should've been advised to join the BSPS2, which IFM hasn't disputed. So, if IFM had given suitable advice I also think Mr T would most likely have transferred his benefits to the BSPS2. The normal retirement age from the BSPS2 was 65.

When making its loss calculation IFM was required to determine the date from which Mr T would have taken the benefits from the DB scheme. So, as per the provisions of DISP App 4.3.16R, IFM should have assumed that Mr T would have taken his benefits from the scheme at age 65 unless any of the provision of paragraph 4.3.17R applied. But I don't think any of those provisions apply.

I understand Mr T is still working, so he hasn't retired. And he hasn't taken an annuity. I'm aware he took PCLS shortly after his 55th birthday; the first age at which he was able to access those sums. But I don't think that means he would have taken his benefits from the BSPS2 at that age.

One of the main differences between DB schemes and most personal pensions is that, if a member wanted to take any benefits from a DB scheme, they would need to take all of those at the same time. So, if Mr T wanted to take a PCLS payment at age 55 from the BSPS2, he would have also had to take a regular income from it at the same time. And, if taken early, that income would have been reduced by around 30% compared to what he could receive at age 65. So I think it's unlikely he would have taken a PCLS payment at age 55 from the BSPS2 had he been advised to join that scheme. He was still working and hadn't retired. So he didn't need another regular income at that time and taking one would have made him worse off in retirement.

In contrast the rules concerning Mr T's personal pension are different. And, once a policy holder turns 55 they can take up to 25% of their pension fund tax free. They don't need to draw any income from it and can leave the remainder invested to use as an income when they eventually retire. And it appears that's the case here. That is, Mr T's taken advantage of the different rules applying to his personal pension and drawn a tax free PCLS payment from

it. But that isn't something he could have done had he transferred to the BSPS2. As I've said above he would also have had to take a reduced pension income. So I think it's unlikely he would have taken the same course of action if his benefits had transferred to the BSPS2. So I don't think it was fair for IFM to determine that Mr T would have taken his retirement benefits from the BSPS2 at age 55.

For completeness I'll add that during the evidence gathering process Mr T told IFM that his preferred retirement age was 62. But I think most people, when asked, would say that they would like to retire early. But, for most, early retirement means a significant drop in income. And that would dramatically reduce most individuals' spending power and lifestyle choices. As a result, 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 T.

Also, at the time of IFM's advice Mr T was still 11 years away from 62 and 14 years away from 65. And during that time his plans could change. So I don't think he had any concrete plans to retire at age 62. It follows that I think IFM should compensate Mr T for the unsuitable advice, in line with the regulator's rules for calculating redress for non-compliant pension transfer advice. This should be based on Mr T taking benefits from the BSPS2 at age 65.

Also, as the unsuitable advice has been a source of distress and inconvenience for Mr T IFM should pay him £350 to address that.

Putting things right

A fair and reasonable outcome would be for IFM to put Mr T, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr T would most likely have opted to join the BSPS2 if 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 BPS-specific redress calculator to calculate the redress. A copy of the BPS calculator output should be sent to Mr T (via his representatives) and our Service upon completion of the calculation.

As I've said above, Mr T has not yet retired, and 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 DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr T's acceptance of my final decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, IFM should:

- calculate and offer Mr T redress as a cash lump sum payment,
- explain to Mr T before starting the redress calculation that:
 - 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 T receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr T accepts IFM's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr T for the calculation, even if he ultimately decides not to have any of the redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr T's end of year tax position.

Redress paid to Mr T as a cash lump sum 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 T's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

Where I uphold a complaint, I can award fair compensation of up to £160,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £160,000, I may recommend that the business pays the balance.

My final decision

Determination and money award: I uphold this complaint and require Inspirational Financial Management Ltd to pay Mr T the compensation amount as set out in the steps above, up to a maximum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Inspirational Financial Management Ltd pays Mr T the balance.

If Mr T accepts this decision, the money award becomes binding on Inspirational Financial Management Ltd.

My recommendation would not be binding.

Further, it's unlikely that Mr T can accept my decision and go to court to ask for the balance. Mr T may want to consider getting independent legal advice before deciding whether to accept this final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 5 July 2023.

Joe Scott
Ombudsman