DRN-4141522

The complaint

Mr R 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 R'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 R's employer would be set up – the BSPS2.

In September 2017, the DB scheme administrators sent Mr R information about his entitlement under his current DB scheme which showed a cash equivalent transfer value ('CETV') of £512,583.27. Mr R had a total of 20 years and 1 month of pensionable service in the DB scheme.

Mr R wasn't sure what to do about his DB pension so he contacted his independent financial adviser ('IFA'). As Mr R's IFA wasn't authorised to advise on DB pension scheme transfers, it referred Mr R on to IFM. A meeting took place between Mr R and IFM sometime before late October 2017 during which a fact-find was completed to gather information about Mr R's circumstances and objectives. The fact-find was undated but it noted that Mr R was aged 55, his wife was aged 53 and their adult son lived with them. It was also noted that Mr R earned £40,000 a year and his wife earned £7,500 a year. It was further noted that Mr and Mrs R had an outstanding mortgage of £35,000 although the remaining term was undocumented. Finally, IFM documented that Mr R 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 Mr R's attitude to risk ('ATR') during the meeting, concluding it was 'cautious'.

The fact-find also included sections on retirement planning and the drawing of pension benefits. Both sections included a number of questions which were then followed by a section of tick-box answers for Mr R to select. Mr R ticked boxes to say he preferred lump sum death benefits over a pension; that he wanted to increase death benefits but only if doing so didn't reduce his own retirement benefits; that he would like flexibility in retirement and to control the way his pension benefits were paid; that a higher tax-free cash ('TFC') lump sum was important to him; that he anticipated retiring early and was happy to accept a lower pension, and that he was concerned about the security of his pension and didn't value the guarantee provided by the PPF. Finally Mr R was documented as wanting to take £40,000 TFC in the next twelve months to clear his mortgage and £5,000 of credit card debt.

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).

On 23 October 2017, IFM provided Mr R with its suitability report in which it recommended that he transfer his BSPS DB pension benefits to a personal pension plan. Mr R's objective for transferring was documented in the suitability report. This was that he wanted to transfer his DB scheme benefits to provide greater flexibility and control when drawing his pension. The report also noted that Mr R said he'd like to retire around age 57 which was something that might not be possible under BSPS2 or PPF, nor would either scheme provide him with the flexibility he wanted to achieve. The suitability report further noted that Mr R wanted to access some TFC now (without the need to simultaneously draw an income) so he could repay his mortgage immediately and enter retirement debt-free.

Mr R signed the transfer discharge forms on the same day.

Mr R received a letter dated 14 December 2017 from the provider of his personal pension informing him that his personal pension had been set up with a start date of 12 December 2017 following receipt of his total CETV of £512,583.27. The letter confirmed Mr R had taken £40,000 as a tax-free lump sum.

Mr R retired from work at age 59 in March 2022.

On 3 February 2022 Mr R, through his representative, complained to IFM. He said the advice he'd received to transfer his DB scheme had been unsuitable and not in his best interests.

IFM acknowledged Mr R's complaint but failed to provide him with a formal response. Dissatisfied with the lack of response to his complaint Mr R complained to the Financial Ombudsman Service. Our Investigator looked into Mr R'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 R's best interests so he recommended that IFM should establish whether Mr R had suffered a loss as a result of its advice to transfer.

Our Investigator thought that IFM should have advised Mr R to opt into the BSPS2 because at the time of the advice he wasn't certain about when exactly he wished to retire, and because (as ascertained by our Investigator) Mr and Mrs R's mortgage wasn't due to be repaid until he reached age 62. Our Investigator also thought it wouldn't have been in Mr R's interests to accept the reduction in benefits he would have faced if he moved to the PPF and that, had he done so, they would not have been offset by the more favourable reduction (as compared to BSPS2) for taking early retirement. Our Investigator also recommended that IFM should pay Mr R £350 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 R'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 R with this crucial information, in so doing, failing to pay due regard to Mr R's information needs so that he could make a fully informed decision.

- The suitability report IFM provided to Mr R refers in a general way to the TVAS but goes on to dismiss its relevance on the grounds that Mr R 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 R was giving up were 'typically' about 8% a year (and had IFM produced a TVAS, the critical yield for retirement at age 57 was likely to be significantly higher than ‘typically 8%’). IFM also said that, because the terms of the BSPS2 were likely to be inferior to the current BSPS, the growth rate required to match BSPS2 would be lower (than 8%). For the PPF, IFM said it investment growth rates of around 4% per year would need to be achieved to match the benefits being offered by the PPF.

- But Mr R was a cautious investor, so he would have needed to take investment risks in excess of those he was comfortable with just to *match* his DB scheme benefits. I say this because the discount rate was 3.7% for 9 years to retirement (2.5% for 1 year to retirement) and the regulator’s lower projection rate was 2%, I think Mr R was always likely to receive pension benefits from age 65 (and age 57) 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 R’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.

- By the point IFM was advising Mr R 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, principally that Mr R placed a higher value on having flexibility, choice and control over his pension over and above having a guaranteed income for life and because he desired early retirement. IFM said neither objective may be satisfied by the BSPS2 or PPF.

- I don’t think Mr R necessarily wanted to retire early. I say this because his retirement plans clearly weren’t fully formulated as he said he *may* want to retire early, at age 57. Whilst early retirement was clearly discussed at the time of the advice, in the end, Mr R worked until he was nearing age 60 but I understand that retirement at the point was as a result of ill-health rather than any specific goal he had.

- I don’t think either that Mr R required flexibility in retirement. I also say this because there is no evidence that Mr R needed anything other than a fixed, escalating pension in retirement. In fact there was no information gathering carried out by IFM about Mr R’s retirement income needs and plans at all. So I don’t think it can be said that flexibility was an actual objective for him. I think his retirement income needs could have been met by remaining in the DB scheme and moving with it to the BSPS2. And if, when his retirement plans became more concrete, he later decided he did really want and need the flexibility associated with a personal pension plan then he could have transferred his benefits then. So I think it was too early to make such an irreversible decision.

- Further Mr R was, by the time IFM advised him, a member of his employer’s defined contribution scheme to which he was contributing 6% of his salary and his employer 10%. So Mr R already had a pension scheme that would have provide him with flexibility at retirement had that been something he wanted and needed at the time. Whilst the fund would likely not have been significant at retirement it would, nevertheless, have been able to be flexibly accessed.

- Based on the evidence I’ve seen, I don’t think Mr R had a genuine need to access his TFC before retirement. I say this because it is clear from the fact-find that Mr and Mrs R were managing to afford their monthly mortgage repayments and also had some surplus income left over each month which could have been redirected (either directly or via a personal loan) to clear down their credit card debt or build up a savings fund. And I've seen no evidence that their mortgage needed to be repaid at age 55 instead of either running to term (at age 62) or to when Mr R took retirement.

- Mr R has said that he would have let his mortgage run to term had he been suitably advised and had used any savings he accumulated from his disposable income whilst working to clear any remaining balance on retirement. So I think that Mr R could have cleared his mortgage and remained in his DB scheme and I think that IFM should have had regard to Mr R's information needs in this respect so that he would have been in a position to make a fully informed decision.

- So Mr R didn't need to give up the guaranteed benefits of his DB scheme in order to achieve his objectives of repaying his debts, possibly take early retirement and have flexibility in the way he accessed his pension benefits (had that been a true objective).

- Part of IFM's role was to provide Mr R with full information about his early retirement entitlements under the alternative BSPS2 and PPF schemes so that he could make a fully informed decision.

- Both the BSPS2 and the PPF would have allowed Mr R 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 R. 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 (aside from the critical yield of 'around' 4% to match the benefits offered by the PPF at age 65). Thus Mr R 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 57 or at age 65.

- IFM failed to have regard to Mr R'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 R would have the option to take benefits from the PPF early – but this was not the case. Mr R could have taken benefits from the PPF early had he so wished so this statement was misleading. 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 R.

- And if early retirement was a genuine goal for Mr R, it wasn't IFM's role just to put in place what Mr R 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 Rs circumstances, future plans and retirement needs such that IFM could conclude that the transfer was clearly in Mr R's best interests.

- IFM assessed Mr R 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 R had little capacity for loss – this was his main pension and his wife had no private pension provision at all – 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 R's pension provision was then subject to investment risk whereas by moving to the BSPS2 or PPF, Mr R's benefits would escalate annually.

- Mr R'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 R – it was simply a consequence of transferring away from his DB scheme.

- Mr R 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 R 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 R 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 R's best interests to do so.

- On the fact-find Mr R 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 R and definitely not at the expense of his retirement benefits. And given that the transfer wasn't financially viable a reduction in Mr R's retirement benefits was almost certain to ensue but IFM proceeded to advise Mr R to transfer regardless.

- Ultimately IFM should not have encouraged Mr R to prioritise the potential for alternative death benefits through a personal pension over his security in retirement. IFM was tasked with advising Mr R about what was best for his retirement and it's clear that Mr R 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 R's wife in the event of his death. The death benefits offered by the personal pension however, were dependent on investment performance and, as the *'Drawdown Income'* graph shows, there may not have been a large sum left particularly if Mr R lived a long life.

Overall, I can't see persuasive reasons why it was clearly in Mr R'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 R would've insisted on transferring, against advice to remain in the DB scheme. I'm satisfied that if the risks associated with giving up his secure income had been made sufficiently clear then Mr R would have retained his DB scheme benefits. So, I'm upholding the complaint as I think the advice Mr R received from IFM was unsuitable and not in his best interests.

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 R. To address that I think it's fair that IFM pays him £350 compensation.

Putting things right

A fair and reasonable outcome would be for the business to put Mr R, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr R would most likely have remained in the occupational pension scheme and opted to join the BSPS2 if suitable advice had been given. I say this because although Mr R indicated he may want to retire early his plans to do so weren't fixed, so I don't think it would have been in his best interests to accept the reduction in benefits associated with entering the PPF. In addition, under BSPS2, the spouse's pension would have been fixed at 50% of Mr R's pension at the date of death, calculated as if no lump sum had been taken. Further the annual indexation of Mr R's pension when in payment was more advantageous under the BSPS2 than the PPF. So, on balance, had it been suitably advising Mr R and acting in his best interests, I think that IFM should have advised Mr R to opt in to the BSPS2.

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 R and our Service upon completion of the calculation together with supporting evidence of what Mr R based the inputs into the calculator on.

For clarity, Mr R retired at age 59 but he did so because of ill health. But given the outstanding term on his mortgage, I think that Mr R, but for his ill health, would have chosen to retire at age 62 once his mortgage had been fully redeemed. So compensation should be based on Mr R taking benefits at age 62.

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

Redress paid to Mr R as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, IFM may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr R's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

IFM should also pay Mr R £350 for the trouble and upset its 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 R 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 R the balance.

If Mr R 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 R can accept my decision and go to court to ask for the balance. Mr R may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 22 December 2023.
Claire Woollerson
Ombudsman