DRN-4146023

The complaint

Mr G complains about the suitability of the advice provided by Inspirational Financial Management Ltd ("IFM") in November 2017 to transfer the value of his safeguarded benefits in the British Steel Pension Scheme ("BSPS") to a personal pension plan ("PPP").

What happened

Mr G had built up safeguarded benefits in the BSPS while employed by Tata Steel UK Ltd ("Tata Steel"). The BSPS was a defined benefits ("DB") pension scheme that provided a guaranteed lifetime income to members.

In March 2016, Tata Steel announced that it would be examining options to restructure its business including decoupling the BSPS from the company. The consultation with members referred to possible outcomes regarding their safeguarded benefits, one of which was a transfer to the Pension Protection Fund ("PPF") – the PPF is a statutory fund designed to provide compensation to members of DB pension schemes when their employer becomes insolvent. Tata Steel closed the BSPS to further benefit accrual from 31 March 2017. By that point, Mr G had built up 25 years and 9 months' pensionable service in the BSPS between August 1990 and May 2016. His annual scheme pension as at the date of leaving the scheme was £16,630.29. This would be revalued over the term to retirement by a prescribed amount (by September 2017 it had been revalued to £16,784.28).

In May 2017, the PPF announced that the terms of a Regulated Apportionment Arrangement had been agreed. This was approved by The Pensions Regulator in August 2017 – under the announced plans, Tata Steel agreed to set up and sponsor a new DB pension scheme, the BSPS2, subject to certain conditions relating to funding and size being satisfied. Members were told that if the re-structure was approved, they would have three options regarding their safeguarded benefits:

1. Transfer to the PPF;
2. Transfer to the BSPS2; or
3. Transfer to an alternative pension plan such as a PPP

In September 2017, terms of the re-structure were confirmed enabling trustees of the BSPS to start to talk to members in detail. This led to the *'Time to Choose'* communication pack being issued to members, including Mr G, in October 2017. The pack provided more detail about the three options available and was intended to help members choose an option.

Mr G was concerned about what the announced changes meant for the security of his safeguarded benefits and wanted advice on his options. He contacted IFM for advice. It recorded the following information about Mr G in November 2017:

- He was aged 43, in good health and unmarried but was co-habiting with a partner. He didn't have anyone financially dependent on him;

- He was employed full-time by Tata Steel and paid gross annual income of about £43,000. He didn't expect his employment status to change in the foreseeable future;

- His assets comprised the residential home which he owned outright (the value wasn't recorded). He didn't have any other savings or investments;

- He didn't have any debts or liabilities;

- After paying for bills and essentials, he had surplus disposable income of about £800 available every month;

- In addition to the value of his safeguarded benefits in the BSPS, he had been a member of Tata Steel's defined contribution ("DC") pension scheme since June 2016. The total annual contribution paid into his DC plan was 12% of his gross annual salary. The value of his DC plan at that time wasn't recorded. He was also on course to receive the full state pension at age 67;

- Through his employment he had a lump sum death in service benefit of six times' his salary; and

- He was an inexperienced investor with very little knowledge and experience of investments. On a scale of 1 to 6 where 1 (Risk Averse) was lowest risk and 6 (Aggressive) was highest risk, his risk profile was determined to be 4 or *'Moderate'* risk. This was defined as*, "You are happy to take on investment risk and understand that this is crucial in terms of generating long-term return. You are willing to take risk with most of your available assets".*

IFM's adviser issued his suitability report on 1 November 2017. This explained to Mr G that he had three options regarding his safeguarded benefits, as previously communicated by the BSPS. The BSPS offered Mr G a transfer value of £433,556.10 in respect of his pensionable service if he transferred to a PPP.

It was stated in the suitability report that Mr G's primary objective regarding his safeguarded benefits was to retire earlier than the BSPS normal retirement age of 65, preferably somewhere around age 58 if his financial situation allowed it. There was also reference to Mr G preferring to draw flexible benefits, obtaining control over the value of his benefits and to maximise the death benefits available to his family. In reference to the critical yield, the adviser stated in the suitability report, *"I can confirm that our analysis to date of the British Steel Scheme has shown that annual investment returns of typically around 6 – 8.0% p.a. are required in order to match the benefits available at 65 from the 'current' British Steel scheme".* A transfer value analysis ("TVAS") report produced on 7 November 2017 *after* the date of the suitability report, showed that Mr G's estimated revalued annual scheme pension at age 65 was £28,365.93 on the basis he took a full scheme pension only.

IFM's adviser discounted the PPF and BSPS2 options and instead recommended that Mr G accept the transfer value of £433,556.10 and transfer to a PPP provided by Royal London for the following reasons:

- *"You require the flexibility to control and tailor the frequency and amount of income you receive from your pension fund in retirement to suit your circumstances, needs and tax position, as opposed to the pre-set (albeit guaranteed) income that your existing defined benefits pension would provide.*

- *You want to ensure you can retire when you want and do not want to take the risk of having restrictions in place when the scheme enters the PPF or it becomes the 'new' British Steel Pension Scheme.*

- *You are prepared to accept more risk in return for greater flexibility over when and how benefits are withdrawn from your pension fund."*

The costs associated with the recommendation were as follows:

Initial advice charge

- 1.00% (or £4,335) – initial adviser charge for recommendation and implementation

Ongoing annual charges

- 0.40% investment annual management charge deducted from the PPP fund value (the product charge was noted as "nil")

- 0.40% ongoing annual advice charge payable to IFM, deducted from the PPP fund value

Mr G accepted the recommendation, following which the transfer to the PPP was completed. IFM recommended that the PPP fund value be invested in Royal London's *'Governed Portfolio 2'* fund to align with Mr G's '*Moderate'* risk profile. According to the suitability report, the *'Governed Portfolio 2'* fund was appropriate for an investor who had a cautious attitude to risk over a medium time period away from retirement. The PPP application form confirmed that in the event of his death, Mr G wanted the entire value of his PPP paid to his partner.

This complaint

During 2022, Mr G complained to IFM about the suitability of the pension transfer advice it had given him in 2017. He felt that IFM's adviser had lured him into the pension transfer on the pretext of achieving a pension fund of around £1m but he now considered this misleading. He was also unhappy about the level of fees IFM had charged him following the pension transfer but had failed to provide advice in connection with his PPP. In his view, the pension transfer advice was unsuitable and had caused him to suffer a financial loss.

IFM didn't uphold this complaint. In summary, it stated that Mr G was concerned about the issues surrounding Tata Steel and the security of his safeguarded benefits in the BSPS. It considered that the continuing uncertainty at the time was sufficient reason for Mr G to transfer away so that he could obtain control of his safeguarded benefits. It said that he wanted the flexibility to withdraw variable amounts of money from his target retirement age of 58 and to leave a lump sum to his family on death. And that he didn't want to transfer to the PPF. It was satisfied that it had adhered to and considered relevant FCA rules and guidance including providing Mr G with all the necessary information and risk warnings in good time to be able to make an informed decision. It didn't believe the alternative options of the PPF or BSPS2 could've met Mr G's early retirement objective. In its view, the pension transfer to the PPP was in his best interests and so was therefore suitable.

In April 2023, one of our investigators considered this complaint and recommended that it be upheld because, in his view, IFM failed to demonstrate at the time that transferring to the PPP was clearly in Mr G's best interests compared to the alternative options. He thought suitable advice would've been to transfer to the BSPS2. To put things right, our investigator recommended that IFM carry out a redress calculation in line with the FCA's guidelines on the basis that Mr G transferred to the BSPS2, retired at age 65 and would be a 20% income taxpayer in retirement.

Mr G accepted our investigator's assessment. IFM didn't provide a response to our investigator. Since agreement couldn't be reached, this complaint has been referred to me to review and decide. This is the last stage of our process.

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.

In deciding on what's fair and reasonable, 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. 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.

I'd like to clarify that the purpose of this decision isn't to repeat or address every single point raised by the parties. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

IFM's response to this complaint

IFM issued a final response letter to Mr G rejecting this complaint. But it didn't provide a response to our investigator's assessment. It's unclear why. Regardless of its reasons, I've decided that IFM has had sufficient time to respond and provide any additional comments or evidence for me to consider. Based on the available contemporaneous evidence, I'm satisfied that I have sufficient information to be able to decide this complaint.

The FCA's applicable rules and guidance

The below isn't 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*
>
> PRIN 9: *A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment*
>
> 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)*
>
> COBS 4.2.1R: *A firm must ensure that a communication or a financial promotion is fair, clear and not misleading*

The suitability rules and guidance that applied when IFM advised Mr G were set out in COBS 9.2. The relevant rules were COBS 9.2.1R and 9.2.2R.

The provision in COBS 19 which specifically relate to a DB pension transfer were as follows:

COBS 19.1.2R required the following:

“A firm must:

(1) compare the benefits likely (on reasonable assumptions) to be paid under a defined benefits pension scheme or other pension scheme with safeguarded benefits with the benefits afforded by a personal pension scheme, stakeholder pension scheme or other pension scheme with flexible benefits, before it advises a retail client to transfer out of a defined benefits pension scheme or other pension scheme with safeguarded benefits;

(2) ensure that that comparison includes enough information for the client to be able to make an informed decision;

(3) give the client a copy of the comparison, drawing the client’s attention to the factors that do and do not support the firm's advice, in good time, and in any case no later than when the key features document is provided; and

(4) take reasonable steps to ensure that the client understands the firm’s comparison and its advice.”

And COBS 19.1.3 G stated:

“In particular, the comparison should:

(1) take into account all of the retail client's relevant circumstances;

(2) have regard to the benefits and options available under the ceding scheme and the effect of replacing them with the benefits and options under the proposed scheme;

(3) explain the assumptions on which it is based and the rates of return that would have to be achieved to replicate the benefits being given up;

(4) be illustrated on rates of return which take into account the likely expected returns of the assets in which the retail client's funds will be invested; and

(5) where an immediate crystallisation of benefits is sought by the retail client prior to the ceding scheme’s normal retirement age, compare the benefits available from crystallisation at normal retirement age under that scheme.”

Under the heading “Suitability”, the following was set out:

COBS 19.1.6G:

“When advising a retail client who is, or is eligible to be, a member of a defined benefits occupational pension scheme or other scheme with safeguarded benefits whether to transfer, convert or opt-out, a firm should start by assuming that a transfer, conversion or opt-out will not be suitable. A firm should only then consider a transfer, conversion or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer, conversion or opt-out is in the client's best interests”

COBS 19.1.7G:

“When a firm advises a retail client on a pension transfer, pension conversion or pension opt-out, it should consider the client’s attitude to risk including, where

relevant, in relation to the rate of investment growth that would have to be achieved to replicate the benefits being given up."

COBS 19.1.7B:

"In considering whether to make a personal recommendation, a firm should not regard a rate of return which may replicate the benefits being given up from the defined benefits pension scheme or other scheme with safeguarded benefits as sufficient in itself.

COBS 19.1.8G:

"When a firm prepares a suitability report it should include:

(1) a summary of the advantages and disadvantages of its personal recommendation;

(2) an analysis of the financial implications (if the recommendation is to opt-out); and

(3) a summary of any other material information."

Businesses are required to follow these rules and consider the guidance because the FCA considers safeguarded benefits to be valuable. Based on the above regulatory rules and guidance, businesses advising on pension transfers should start by assuming that the existing DB pension scheme is suitable and to only recommend a transfer, which converts safeguarded benefits into flexible benefits, if it can *clearly* demonstrate it's in their client's best interests.

In assessing the suitability of IFM's advice to Mr G, it's necessary for me to have due regard to the FCA's rules and guidance stated above.

<u>*Mr G's situation when IFM advised him*</u>

The situation for Mr G wasn't normal because the existing DB pension scheme, the BSPS, was closing. So he was essentially forced to transfer the value of his safeguarded benefits to a new scheme. Three options were available, as stated by the BSPS in its *'Time to Choose'* communication pack and repeated by IFM in its suitability report.

The BSPS was one of the largest DB pension schemes in the UK with approximately 125,000 members. It's undeniable that it was a period of great uncertainty for BSPS members, many of whom had been largely passive pension savers and found themselves having to make major and irreversible choices about their financial futures. I think it's fair to say that many members were in a vulnerable position due to the uncertainty surrounding the future of the BSPS. As a result, I think it was essential for any regulated adviser making a recommendation to a BSPS member to have a detailed understanding of each of the options available and of their customer's personal circumstances.

The PPF and BSPS2 options provided guaranteed lifetime income but there were differences between them for deferred members like Mr G. The PPF was designed to provide members with at least 90% of their starting pension value but the BSPS2 was designed to provide members with 100%. The PPF was likely the better option for unmarried members who expected to retire early or take the maximum tax-free cash available even allowing for the 10% reduction in the starting entitlement. But the BSPS2 was likely the better option for married members or those who expected to draw benefits at or close to the scheme normal retirement age of 65. The BSPS2 provided the potential for discretionary increases to the scheme pension, a higher level of spouse's pension and the option to transfer to a PPP at a later date, if then deemed suitable. The benefits available under the PPP option would be dependent on the performance of underlying investments and annuity rates available at retirement – in other words, there were no guarantees regarding the level of benefits paid.

I don't believe that the circumstances surrounding the BSPS altered the FCA's position or its expectations of firms. Given the FCA's view on safeguarded benefits and what was known at that time, it's my fair and reasonable opinion that IFM should've considered that the BSPS2 was likely to be the better option for Mr G based on his personal circumstances and the uncertainty about when he would be able to retire. And so it's my view that IFM should've only recommended a transfer to the PPP in favour of the BSPS2 if it could clearly demonstrate why it was in Mr G's best interests, as referenced in COBS 19.1.6G.

Having considered the evidence, I agree with the investigator's view that IFM's pension transfer advice to Mr G was unsuitable for largely the same reasons. My view can be summarised as follows:

- The primary purpose of a pension is to meet the income needs of an individual during retirement. Mr G's safeguarded benefits, accounting for 25 years and 9 months' pensionable service, represented his most valuable asset. He had limited other assets that could be used to support his retirement income needs. Given the lack of other assets, IFM ought to have recognised that Mr G was likely to be heavily reliant on the value of his safeguarded benefits to generate a minimum level of core income to support his standard of living in retirement until state pension age. Given Mr G's limited capacity for loss, I think it was important not to expose the value of his safeguarded benefits to unnecessary risk by treating flexibility, control and maximisation of death benefits as a high priority at the expense of the primary income purpose – unless there was a clearly suitable reason to do so;

- According to the suitability report, the primary aim of the pension transfer was so that Mr G could retire early at around age 58 if his financial situation allowed it. But he was then aged 43 and so couldn't access any benefits until age 55 at the earliest under the PPP. In my view, with such a time frame until pension benefits could be accessed, it made the case for a pension transfer at that time – for the sake of achieving possible early retirement – more difficult to justify. And it seems IFM agreed because in its suitability report it stated, *"Given your age and that retirement is likely to be around 15 years away, it's impossible to know at this stage what type of retirement income will be the most appropriate choice for you in the future. In other words, it's too early to know whether the income flexibility offered by a Personal Pension for example or the availability of more tax-free cash will satisfy your needs better than the British Steel pension.";*

- I think the suitability report misled Mr G about the ability to take early retirement benefits under the PPF option. It stated, *"Early retirement will not be an option under the PPF".* This is incorrect since the PPF permits members to take benefits early from age 55 onwards subject to a reduction;

- IFM stated that early retirement at age 55 was allowed under the BSPS subject to a 30% reduction in the annual pension income. It stated that early retirement under the BSPS2 would likely be subject to a similar reduction. I think it portrayed the reduction under the BSPS as a penalty. But it wasn't a penalty. Rather, the reduction was applied to reflect the fact that the scheme would have to support the income for longer than anticipated, and to protect the interests of scheme members generally.

And so, based on what IFM said, it's likely Mr G incorrectly believed he would be unfairly treated if he took benefits early under the BSPS2;

- IFM stated in the suitability report, *"Your deferred pension available at age 65 currently stands at a full pension of £16,784".* But that was the revalued annual pension as at September 2017 when Mr G was aged 43. According to the TVAS calculation produced on 7 November 2017, the estimated revalued annual pension at age 65 in 2039 was £28,365.93. So the reference to £16,784 at age 65 was misleading;

- IFM attempted to show in the suitability report the early retirement pension payable under the BSPS at age 55. It stated, *"For illustrative purposes only, if you were 55 now and retiring under the 'current' British Steel scheme, the annual pension would be c£11,750 per year or c£8,300 with a tax-free lump sum of c£55,000".* But that illustration was potentially misleading for an inexperienced investor like Mr G. This is because that figure of £16,784 would need to be revalued to age 55 before the 30% reduction for early retirement was applied – but IFM applied it to the revalued pension as at age 43. I think the way the information was presented may have misled Mr G to believe that the benefits payable by the BSPS (and therefore the BSPS2) at age 55 were lower than was actually the case;

- IFM portrayed the PPP option as allowing for early retirement earlier than age 65 without penalty. I think this was misleading. The reality was of course that the PPP would've had less time to grow if accessed earlier than age 65 and any resulting income would need to last longer. I cannot see that this was adequately explained to Mr G so that he could understand accessing any of the available options early would likely lead to reduced retirement income during his lifetime compared to taking benefits at age 65. So I think he made the decision to transfer from an uninformed position in this regard;

- The basis of the advice wasn't to enable Mr G to retire immediately but instead at some indeterminate point in the future. The further away from retirement an individual is, the harder it is to establish a realistic income figure and whether early retirement would in fact be possible. I think it would've been difficult to calculate an accurate income figure with the time frame to age 58. In its final response letter to this complaint, IFM stated in reference to Mr G's retirement income need, *"…it was assumed that you would be likely to need around £1,700pm (i.e. around £20,000 a year net) based on your current expenditure".* But I cannot see any reference to this in the suitability report or other contemporaneous evidence. As noted above, at the time of the advice, the adviser admitted it was impossible to know in 2017 what Mr G's retirement income need would be at age 58;

- It's my view that IFM failed to obtain the necessary information relating to Mr G's financial situation including his anticipated income and expenditure during retirement when assessing whether it was suitable for him to transfer out of the BSPS to achieve his early retirement objective. It may well have been the case that Mr G's retirement income need could've been met by the BSPS2 but IFM failed to establish this. Ultimately, however, there's insufficient evidence to demonstrate why it was in Mr G's best interests to transfer at that time to achieve his early retirement objective or whether he could in fact retire earlier than age 65;

- Transferring to the PPP led to the investment, inflation and longevity risks associated with his safeguarded benefits being transferred from the scheme to Mr G. Those risks would've been retained by the BSPS2 had he transferred to that scheme – I can’t see that there was any compelling reason for Mr G to take on those risks at that time;

- Had IFM advised Mr G to transfer to the BSPS2 he would’ve maintained safeguarded benefits and retained the option to transfer to a PPP at a later date, if then deemed suitable, when he could immediately access benefits and, crucially, determine his retirement income and lump sum needs with far greater accuracy than at age 43;

- IFM recorded that Mr G wanted to transfer his safeguarded benefits to a PPP to provide greater flexibility when drawing benefits from his pension fund rather than have guaranteed lifetime income. It’s unclear why Mr G apparently didn’t value guaranteed income. He had received guaranteed income all his working life. So I think a guaranteed retirement income from another source such as the BSPS2 before state pension age would’ve been valuable for an individual in his circumstances;

- Flexibility and control might sound attractive, but I can’t see that Mr G had any concrete need for it. I’m not persuaded that it was appropriate for an inexperienced investor to relinquish the guarantees attached to his main retirement provision in exchange for more risk so that he could access flexible benefits in the future. There’s no real evidence that Mr G required the flexibility of irregular lump sums or variable income during retirement. But if he did require it, then any flexible needs could’ve been met by his DC workplace pension. And he’d also have access to tax-free cash under the BSPS2. This doesn’t appear to have been adequately considered by IFM;

- Mr G had surplus disposable income in excess of £800 available every month. There’s inadequate evidence that IFM considered saving some of these additional monies in either a pension, investment or savings account to provide flexible income or lump sums rather than transferring and losing benefit guarantees;

- IFM recorded that Mr G was concerned about the security of his safeguarded benefits and so wanted *“control”* over his pension. But he appears to have been a largely passive pension saver up until that point. There’s no evidence he had experience of controlling, managing or investing large sums of money. In my view, Mr G had limited knowledge and experience to enable him to understand the risks involved in transferring his safeguarded benefits;

- It was noted that Mr G was concerned about a transfer to the PPF at a later date. While I understand that he may have been concerned about this, I don’t consider a transfer to the PPF was an outcome to avoid. Under the PPF, Mr G would’ve received a minimum of 90% of his scheme pension. This contrasted with the recommended PPP where there’s no promise of a minimum level of benefits payable. If Mr G was concerned about his safeguarded benefits being transferred to the PPF which would result in him losing 10% of the scheme pension, then I question why, as an inexperienced investor, he would accept the risk of transferring to a PPP which exposed his benefits to unlimited downside risks where the loss could be significantly greater than 10%. This doesn’t make sense to me;

- The suitability report mentioned that Mr G wanted to ensure any unused pension benefits be inherited by his family. The PPP application form confirmed that he wanted any death benefit to be paid to his partner who he lived with. While I understand that death benefits are important to consumers, the priority here, in my opinion, was to advise Mr G about what was best for his own retirement provision. He was in good health at the time. Withdrawing money from the PPP to meet income and lump sum needs would likely mean that the size of the fund remaining in later years – when death is more likely – could be much smaller than expected. I can't see that this was explained to Mr G. Through his employment he had a generous lump sum death in service benefit. In addition, the value of his DC workplace pension plan would be payable as a tax-free lump sum. So it's clear his partner would receive a large (relative to what was recorded about their wider financial situation) lump sum death benefit from other sources in the event of his death. And if this was deemed insufficient, the surplus disposable income he had available could've been used to obtain life cover to provide a lump sum on death. These factors don't appear to have been adequately considered by IFM;

- There's no evidence that IFM obtained a TVAS report based on Mr G's specific circumstances, as it was required to do so under COBS 19.1.2R, *before* it advised him. Rather, in the suitability report, IFM inexplicably provided a generic critical yield figure. Its adviser stated, *"I can confirm that our analysis to date of the British Steel Scheme has shown that annual investment returns of typically around 6 – 8.0% p.a. are required in order to match the benefits available at 65 from the 'current' British Steel scheme".* No comment was made on the achievability of the stated growth rates. The wording of the suitability report significantly downplayed the importance of the critical yield, stating that *this "adds no value to the process"* and *"the results of a TVAS are largely academic".* I think IFM's approach to the transfer analysis was improper and didn't help Mr G make an informed decision;

- The growth rate range of 6.0% to 8.0% compares with a discount rate of 4.5% at age 65, as explained by our investigator in his assessment. For further comparison, the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2% per year. It's my view that a required investment growth rate ranging between 6.0% to 8.0% was incompatible with Mr G's *'Moderate'* risk profile, discount rate and the likely investment returns achieved by the recommended investment strategy which was designed for investors with a cautious attitude to risk. I think these factors showed that it was likely Mr G would be financially worse off as a result of the pension transfer;

- In my view, the suitability report failed to meet the fair, clear and not misleading requirements of COBS 4.2.1R. It was generic with templated wording to describe Mr G's objectives with the result that the recommendation wasn't sufficiently tailored to his individual circumstances. I think it lacked sufficient colour and detail. As noted above, it included misleading information regarding the ability to take benefits early under the PPF, stated a generic rather than specific critical yield figure based on Mr G's circumstances, downplayed the importance of the transfer analysis and misled him about the benefits payable by the scheme at ages 55 and 65. And it failed to provide sufficient information on the alternative options to achieve his stated objectives. I think these inadequacies in the suitability report led to him making an uninformed decision to proceed with a pension transfer when this was not in his best interests.

Conclusion

The transfer out of the BSPS was recommended on the grounds that it would meet Mr G's objectives of achieving early retirement, income flexibility, flexible death benefits and control over investment choice. It appears to me that IFM placed greater emphasis on Mr G's objectives, failing to assess whether the pension transfer was in his best interests and whether the objectives could in fact be achieved by transferring to the BSPS2.

Overall, I don't think the contemporaneous evidence supports the position as to why Mr G's generic objectives would've been sufficiently compelling reasons for him to relinquish valuable benefit guarantees by transferring to a PPP at that time, especially in view of his good state of health and level of reliance on these monies to provide retirement income. Based on what I've seen, I think IFM failed to give adequate consideration to the risk that Mr G couldn't financially bear the risks involved in the pension transfer.

I haven't seen any evidence that shows the pension transfer to the PPP led to Mr G gaining any clearly defined advantage compared to the alternative option of transferring to the BSPS2 at that time. As a result, I think it's fair and reasonable to uphold this complaint.

Putting things right

A fair and reasonable outcome would be for IFM to put Mr G, as far as possible, into the position he would now be in but for the unsuitable advice he was given.

Properly advised, I think Mr G would've transferred to the BSPS2 and his benefits would now be preserved in that scheme. I acknowledge that he had an aspiration to retire somewhere around age 58. However, he was at least 15 years away from that target retirement age when IFM advised him. I think it's fair to say that plans about retirement can change over such a long period of time. I'm not persuaded that there's sufficient contemporaneous evidence that supports the position Mr G would've started taking his safeguarded benefits which involved taking a regular income at age 58. And I'm not convinced it could be reasonably determined at the time that the PPF was the likely better option for Mr G. And so I think, given his age and the lack of clarity surrounding when he would retire, the BSPS2 was likely the better option for him based on what was known at the time and that at age 65 the BSPS2 would provide a higher level of benefits than the PPF. As such, the calculation on the basis of entering the BSPS2 should be carried out. For clarity, compensation should be based on the BSPS2's normal retirement age of 65 for the reasons explained.

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 G and our service upon completion of the calculation.

The 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 G's acceptance of this 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 G redress as a cash lump sum payment,

- explain to Mr G before starting the redress calculation that:

    - its 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 the redress prudently is to use it to augment his PPP

- offer to calculate how much of any redress Mr G receives could be augmented rather than receiving it all as a cash lump sum;
- if Mr G accepts IFM's offer to calculate how much of his redress could be augmented, request the necessary information and not charge him 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 G's end of year tax position.

Redress paid to Mr G 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've been taken as tax-free cash and 75% would've been taxed according to Mr G'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.

My final decision

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

Recommendation: If the compensation amount exceeds £170,000, I also recommend that Inspirational Financial Management Ltd pays Mr G the balance.

If Mr G accepts this final decision, the money award becomes binding on Inspirational Financial Management Ltd. My recommendation wouldn't be binding. Further, it's unlikely that Mr G can accept this final decision and go to court to ask for the balance. Mr G 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 G to accept or reject my decision before 18 December 2023.
Clint Penfold
Ombudsman