DRN-4228859

The complaint

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

What happened

Mr R 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 R had built up 26 years and 9 months' pensionable service in the BSPS. His annual scheme pension as at the date of leaving the scheme in May 2016 was £21,645.67. This would be revalued over the term to retirement by a prescribed amount (by June 2017 it had been revalued to £22,206.72).

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 (the BSPS offered Mr R a transfer value of £577,592.86)

Mr R was concerned about what the announced changes meant for the security of his safeguarded benefits and wanted advice on his options. He contacted another business ("Firm A") to get advice. Since Firm A didn't have the necessary regulatory permissions to advise on pension transfers, it introduced Mr R to IFM. On 2 August 2017, the following information about Mr R was recorded by IFM in a document titled *'Pension Review Questionnaire'*:

- He was aged 46, single and in good health. He didn't have anyone financially dependent on him;

- He was employed full-time by Tata Steel and paid gross annual income of about £37,000. He didn't expect his employment status to change in the foreseeable future;

- His assets comprised his residential home valued at about £275,000. He had an Individual Savings Account ("ISA") valued at about £21,000. He didn't have any other savings or investments;

- His liabilities comprised a mortgage on his residential home, the monthly cost of which was about £215. It was due to be repaid in 2018. He didn't have any other debts or liabilities;

- After paying for bills and essentials, he had surplus disposable income of about £314 available every month. This would increase to about £530 once his mortgage was repaid in 2018;

- 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 August 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;

- His primary objective regarding his safeguarded benefits was to retire earlier than the BSPS normal retirement age of 65, preferably at age 55. From age 55 he wanted annual retirement income of about £25,000 and an initial tax-free lump sum of about £60,000 to cover the cost of: a new kitchen, new car, holiday and extension to his residential home. It was noted that he planned to withdraw a higher income in the earlier years and reduce this once his state pension started; and

- He had a fair degree of understanding and knowledge of investments. On a scale of 1 to 5 where 1 (Cautious Risk) was lowest risk and 5 (Adventurous Risk) was highest risk, his risk profile was determined to be somewhere between 2 (Low Risk) and 3 (Balanced Risk).

IFM advised Mr R to accept the transfer value offered by the BSPS and to transfer to a new PPP provided by Prudential. Mr R accepted the recommendation and signed an application form for the PPP on 8 August 2017. By the time the transfer was completed, the BSPS had increased the transfer value from £577,592.86 to £596,427.41 – it was the higher amount that was paid into the PPP.

In response to this complaint, IFM said that it had produced a suitability report at the time it advised Mr R but was unable to locate and provide a copy. Mr R said that he didn't receive a suitability report. As a result, there's no contemporaneous evidence setting out IFM's reasons for recommending a transfer to a PPP in favour of the PPF and BSPS2 options. However, from other contemporaneous evidence, the following is apparent.

PPP investment selection

IFM recommended that the PPP fund value be invested 90% in the Prufund Cautious Fund and 10% in the Prufund Growth Fund to align with Mr R's *'Low/Balanced'* risk profile.

Charges

The charges associated with the recommendation and deducted from the PPP fund value were as follows:

- £5,000 – initial adviser charge for recommendation and implementation;

- 0.65% – ongoing investment annual management charge;
- 0.35% – ongoing product fee; and
- The basis of the advice was that Firm A would provide ongoing advice to Mr R but the cost of that advice isn't confirmed in the contemporaneous evidence.

Transfer value analysis

On 23 August 2017, based on a transfer value of £577,592.86, IFM obtained a transfer value analysis ("TVAS") report that showed Mr R's estimated revalued annual scheme pension at age 65 was £31,797.27 on the basis he took a full scheme pension only. It calculated the critical yield to match that benefit as 5.5%. The calculation assumed 0% ongoing advice costs despite the basis of the advice being that Firm A would provide ongoing advice to Mr R in connection with the management of his PPP. Furthermore, the critical yield at age 55 – to align with the age at which Mr R wanted to retire – wasn't calculated.

This complaint

During 2022, Mr R, complained to IFM about the suitability of the pension transfer advice it had given him in 2017. In his view, the pension transfer advice was unsuitable because it had exposed his money to more risk than he was willing and able to tolerate. He was also unhappy about the level of ongoing charges deducted from his PPP fund value which he said hadn't been made clear to him at the time of the advice. He believed that the advice had caused him to suffer a financial loss and so wanted IFM to provide compensation to put him back into the correct position.

IFM didn't uphold this complaint. In summary, it stated that Mr R 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 R 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 55 which involved an annual income of £25,000 and an initial tax-free lump sum of about £60,000 to cover his spending plans. It stated that transferring to the PPP would enable Mr R to achieve his objectives by withdrawing higher amounts of money in the early years which could be reduced once the state pension started from age 67. Overall, it was satisfied it had adhered to and considered relevant FCA rules and guidance including providing Mr R 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 the stated objectives. Its conclusion was that the pension transfer to the PPP was in Mr R's best interests and so was therefore suitable.

In May 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 R'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 R transferred to the BSPS2, retired at age 65 and would be a 20% income taxpayer in retirement.

Mr R 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 R 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 R were set out in COBS 9.2. The relevant rules were COBS 9.2.1R and 9.2.2R. In addition, COBS 9.5.2R required IFM to retain its records relating to suitability indefinitely if it related to a pension transfer, as it did in Mr R's case. A key record relating to suitability is the suitability report which is intended to set out the reasons for the recommendation.

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 R, it's necessary for me to have due regard to the FCA's rules and guidance stated above.

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

The situation for Mr R 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 and noted above.

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 R. 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 R based on his personal circumstances and the uncertainty about when he would be able to retire (for the reasons I've explained below). 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 R's best interests, as referenced in COBS 19.1.6G.

Having considered the evidence, it's my opinion that IFM's pension transfer advice to Mr R was unsuitable. 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 R's safeguarded benefits, accounting for 26 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 R 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 R'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;

- There's no evidence that IFM provided a suitability report to Mr R. So it's unclear to me why IFM recommended a transfer to a PPP in favour of the PPF and BSPS2 options. IFM's inability to locate a copy of the suitability report is concerning since it had a regulatory obligation under COBS 9.5.2R to retain records relating to pension transfer advice indefinitely. That said, IFM was able to send us copies of other contemporaneous evidence including a document titled *'Pension Review Questionnaire'*. According to this document, the primary aim of the pension transfer was so that Mr R could retire early at age 55. But he was then aged 46 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;

- The basis of the advice wasn't to enable Mr R to retire immediately but instead at some indeterminate point in the future. It was recorded that from age 55 Mr R wanted annual retirement income of about £25,000. There's no reference to whether that was a gross or net figure or whether it would need to escalate in payment. It's unclear to me how that target income need of £25,000 was established. In my view, 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. In my view, the starting point is for the regulated adviser to establish a realistic target income based on the client's likely fixed outgoings, discretionary spending plans and excess income for saving. This information would then reveal the core income required to cover the expected expenditure from the target retirement age – and this would then provide a basis for the recommendation. But in Mr R's case, it seems that he simply provided a notional figure of £25,000 without IFM seeking to understand what this was based on to determine if it was realistic. His income need may well have been a lower figure. I don't think this approach was appropriate because without understanding Mr R's retirement income need it's difficult to conclude that the pension transfer at that time was clearly demonstrated to be in his best interests;

- It's my view that IFM failed to obtain the necessary information relating to Mr R'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 R'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 R'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 R. 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 R to take on those risks at that time;

- Had IFM advised Mr R 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 46;

- In its final response letter to this complaint, IFM stated that Mr R 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. But this is contrary to the information recorded in the *'Pension Review Questionnaire'*. In that document Mr R indicated that a fixed guaranteed income was important to him and that he didn't prefer a less secure adjustable income. 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 R 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 R 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 ISA and DC workplace pension. And he'd also have access to tax-free cash under the BSPS2. There's no evidence that these alternative options were considered by IFM;

- Mr R had surplus disposable income in excess of £314 available every month, which would increase to about £530 once his mortgage was repaid in 2018. There's no 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;

- It was noted that Mr R appreciated the security offered by the PPF but preferred *"control"* over his pension. However, 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 R had limited knowledge and experience to enable him to understand the risks involved in transferring his safeguarded benefits. I don't consider a transfer to the PPF was an outcome to avoid. Under the PPF, Mr R 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 R 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 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;

- It was recorded that Mr R wanted to leave a lump sum death benefit to a beneficiary. While I understand that death benefits are important to consumers, the priority here, in my opinion, was to advise Mr R about what was best for his own retirement provision. He was single and in good health at the time. And he didn't have anyone financially dependent on him. 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 R. It's my view that Mr R had no health issues at the time IFM advised him which might reasonably have prompted him to relinquish the guarantees attached to his own retirement income for the sake of an enhanced safety net for a beneficiary who wasn't financially dependent on him. So I'm not convinced there was any real merit in him transferring to a PPP at that time to provide a lump sum death benefit at the cost of losing valuable benefit guarantees;

- Mr R signed the PPP application form on 8 August 2017, presumably after IFM advised him to transfer. So by that point the decision to transfer had already been made. On 23 August 2017, *after* IFM had advised Mr R, it obtained a TVAS report. There's no evidence that IFM obtained a TVAS report *before* it advised Mr R. So I don't consider the TVAS report dated 23 August 2017 is relevant in deciding this complaint because, on balance, I don't think it featured in either IFM's or Mr R's decision-making process given it was produced about two weeks after Mr R signed the PPP application form. I think IFM's approach to the transfer analysis was improper and prevented Mr R from making an informed decision;

- I think it's worth pointing out that I consider the critical yield figure of 5.5% stated in the TVAS report was incorrect. This is because the basis of the advice was that Firm A would provide ongoing advice to Mr R at a cost – but the cost, which is unclear, wasn't taken into account when calculating the critical yield (the analysis assumed an ongoing advice cost of 0.0%). Including the ongoing advice cost would've led to the critical yield being greater than 5.5%, which further increased the risk that Mr R would be worse off by transferring. In addition, the basis of the recommendation was that Mr R was seeking to take benefits at age 55. If that was the case then I would've expected IFM to also calculate the critical yield figure at age 55 to enable Mr R to make an informed decision. But it didn't. I think this was a material oversight because the critical yield figure at age 55 would've been greater than 5.5% due to the shorter investment timeframe and impact of the initial advice charge on the required growth rate. This compared with a discount rate of 4.4% at age 65, as explained by our investigator in his assessment. In my view, the critical yield was incompatible with Mr R's *'Low/Balanced'* risk profile and the discount rate, meaning that it was likely he would be financially worse off as a result of the pension transfer; and

- Overall, and in the absence of a suitability report, I think the inadequacies in the advice process as I've set out above led to Mr R 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 R'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 R'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 R's 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 R 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 R 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 R, 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 R would've transferred to the BSPS2 and his benefits would now be preserved in that scheme. I acknowledge that the contemporaneous evidence states that he wanted to retire at age 55. However, he was at least nine 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 R would've started taking his safeguarded benefits which involved taking a regular income at age 55. And I'm not convinced it could be reasonably determined at the time that the PPF was the likely better option for Mr R. 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 R 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 R'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 R redress as a cash lump sum payment,

- explain to Mr R 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 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 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 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've been taken as tax-free cash and 75% would've 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.

My final decision

<u>Determination and money award:</u> 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 £170,000.

<u>Recommendation:</u> If the compensation amount exceeds £170,000, I also recommend that Inspirational Financial Management Ltd pays Mr R the balance.

If Mr R 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 R can accept this final 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 this final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 27 December 2023.
Clint Penfold
Ombudsman