DRN-5727721

The complaint

The estate of the late Mrs B complains about the advice that Inspired Financial Solutions Limited (IFSL) gave Mrs B to transfer her defined-benefit (DB) pension to a self-invested personal pension (SIPP).

A professional representative initially helped Mrs B to bring this complaint. The estate then asked the representative to continue to pursue the complaint on its behalf after Mrs B sadly died. For ease of reading, I'll largely refer to the representative's comments as being Mrs B's - apart from towards the end of my decision where I mention the comments I've received more recently**.**

What happened

Mrs B was a deferred member of a DB pension scheme through a former employer.

She had been discussing her investment objectives with a different adviser that was regulated at the time. She'd indicated she was looking for advice about transferring her DB pension as she was interested in investing in a hotel development in Cape Verde. It seems that Mrs B's husband had been a driving force behind this investment idea, as he was looking to make a similar investment himself. However, as the existing adviser didn't have the required regulatory permissions to advise on DB pension transfers, it put her in touch with IFSL, which did have the required authority. In this decision I'm only focussing on IFSL's actions.

IFSL completed a Financial Planning report, also later referred to as a suitability report, for Mrs B dated 8 June 2011. It clearly noted that it had been approached to give her advice about transferring her DB pension only. It said its advice didn't cover other areas of financial need.

Under a heading entitled "*Warning*" IFSL said (in bold):

"Final salary pension schemes of the type you have asked me to investigate transferring have very valuable guarantees attached to them. They provide a certain income at retirement and are heavily subsidised by the employer for whom you previously worked. By transferring away from this plan to a personal arrangement, you lose all of these guarantees. These should not be given up lightly".

IFSL recorded the following information about Mrs B:

- She was age 48; employed and in good health. She wasn't expecting her employment to change in the near future.

- She had eight years pensionable service in the DB scheme (information from the DB scheme suggests the period of pensionable service may have been longer).

- She was expected to receive a pension of £9,071.32 a year in retirement.

- She'd indicated that she may wish to draw benefits earlier than the scheme's normal retirement age of 65. IFSL pointed out that there would be no such restriction if she transferred her pension to another scheme. Nevertheless, the fund would have a shorter period for growth so the "*break even"* figures it provided in an accompanying transfer report would be less accurate. It said it had based its calculations on a retirement age of 65 in line with the DB scheme.

- She was being offered a transfer value of £53,803.76 to leave the DB scheme (it seems that amount had increased by the time the transfer happened).

- She classified her attitude to risk as medium to high (moderately adventurous) meaning that she was prepared to take some risk with her investment in return for the prospect of improving longer term performance. Mrs B indicated that short term capital protection wasn't important to her.

- She said that although her DB benefits were of value to her, they didn't represent a significant portion of her financial wealth.

- She required the maximum lump sum in retirement.

Mrs B said her objectives were to:

- Hold a structured portfolio of investments which matched her attitude to risk and other requirements. She indicated this was her most important priority.

- Have greater flexibility - particularly in terms of the age she could take pension benefits.

- Break all ties with her previous employer and move her funds to an individual plan under her control.

- To potentially provide sums to her dependents in the event of her death, especially as she had little life assurance cover.

- Transfer her DB pension to a SIPP to allow her to invest in a hotel complex in Cape Verde with her husband. Mrs B thought this had the potential to achieve high returns and she explained that her husband was in the process of switching his personal pension to a SIPP to allow him to make a similar investment.

IFSL noted that Mrs B only wanted to discuss the potential transfer of her DB pension to a SIPP (to allow the investment in the overseas hotel complex), even though she may have other needs that needed to be addressed. IFSL explained to Mrs B that not discussing the other objectives could be to her detriment.

It noted the following key considerations:

- There was no guarantee that the selected funds would outperform the current provider's pension or give Mrs B a higher fund value in retirement. So, she may make a transfer because historically the receiving provider had enjoyed better returns, only to find that in future years the existing provider's funds might be worth more.

- It's important that the funds invested in truly reflect the client's attitude towards investment risk - even if that meant a change in the type of funds used from one provider to another.

- The potential impact that a transfer could have on any guarantees or transitional protection would also need to be considered.

IFSL's recommendation:

It said that the best advice for Mrs B was to leave her DB pension where it was. The rate of growth needed in order to match the guaranteed benefits offered by the DB scheme was 9.7%, but IFSL didn't think achieving that growth rate was realistic.

Mrs B wrote to IFSL on 14 June 2011. She confirmed that she'd received its report dated 8 June 2011 and noted its personal recommendation not to transfer her DB pension. She said that, regardless of its advice to leave her pension where it was, "*I want to move it to a SIPP so that I can combine the pension funds that I have with the pension funds that my husband has to purchase a property as our pension investment. I understand the returns that I need to achieve but would like the ability to have control over those funds and what they are invested in".*

IFSL prepared a second financial planning report dated 16 June 2011. It again said that its recommendation was for Mrs B not to transfer her DB pension due to the unrealistic prospect of a new fund being able to achieve the growth rate (9.7%) needed. It added that, *"by transferring you will be worse off"*. It said Mrs B had been very clear in wanting to make the transfer – to allow her and her husband to invest in overseas commercial property. And it noted that she was happy to take on significant risk in the hope of high returns. Noting Mrs B's request to go ahead with the transfer regardless of its recommendation not to, IFSL described DB transfers as "*so dangerous*". It said that one concern it had amongst others was that the DB pension represented a large part of Mrs B's assets, so it questioned whether it was sensible to lose the guarantees the DB pension provided.

Concerning the SIPP, IFSL said it hadn't recommended the SIPP and noted that Mrs B had already attended presentations about potential investment opportunities. But it was aware that the provider was an established company offering specialist SIPPs of the type Mrs B wanted to invest in. It also said it had considered whether a stakeholder pension might be suitable for Mrs B and concluded that "*A stakeholder [pension] could not make the sophisticated and complex investments you wish to make".*

Under a heading "*Investment portfolio*" IFSL said that it hadn't been involved in the selection of investments to be housed within the SIPP, as Mrs B had been advised separately about that by her existing adviser. It did point out however that if the ongoing costs of the funds selected were higher than 1.2% (the ongoing running costs of the fund used to calculate the "*break even*" yield) then the funds would need to grow by more to match the guaranteed benefits offered by the DB scheme. It also explained the importance of the investments being regularly reviewed to ensure they continued to meet Mrs B's objectives and attitude to risk. It said that those reviews would be carried out by Mrs B's existing financial adviser, pointing out, again, that its relationship with Mrs B was purely about advice to transfer her DB pension.

As far as The Cape Verde investment was concerned, IFSL said, "*I must state that this sounds like and is a high-risk strategy and I could not recommend such a course of action. You are not looking for my guidance on this; you merely want me to arrange the transfer for you. In summary you have instructed me to proceed with the transfer, and I am in no way advising you to do so. As you have instructed me to do the transfer I have gone ahead and arranged this".*

IFSL appears to have sent Mrs B a 'cooling off' notice on 27 June 2011.

Mrs B subsequently transferred £59,974.20 from the DB scheme to her SIPP with a company I'll refer to as L. Around July 2011 she invested £35,313.75 in the overseas commercial property followed by a further £12,531.90 in October 2011. The rest remained in a cash account to cover fees and other charges.

It appears that L sent Mrs B transaction statements and valuations relating to her SIPP in the years that followed.

Mrs B complained about IFSL's advice on 23 May 2023. Amongst other things she said it had put its pursuit of business ahead of its obligations to her as its client. She set out a number of areas where she felt its advice was flawed. In particular:

- Instead of assessing whether a transfer of benefits could be justified on the basis of her retirement income strategy, IFSL ought to have considered whether her existing pension arrangements were likely to provide the income she'd need in retirement.

- It ought to have considered whether she'd need to make additional contributions to meet her income needs in retirement.

- It ought to have advised her on the appropriateness of the underlying investment strategy.

IFSL didn't uphold the complaint. In a response sent on 25 July 2023 it said:

- It advised Mrs B to leave her DB pension where it was. Its suitability report dated 8 June 2011 gave a clear recommendation not to transfer.

- Despite what she'd said since, at the time of the advice, Mrs B indicated that her attitude to risk was moderately adventurous. This was covered in the suitability report.

- Mrs B wrote to IFSL on 14 June 2011, referring to its report and recommendation, but insisted she wished to proceed in order to facilitate a property investment with her husband.

Mrs B wasn't happy with IFSL's response, so she complained to the Financial Ombudsman Service.

Whilst the complaint was under investigation by one of our Investigators, IFSL said that Mrs B had made the complaint too late. Amongst its reasons, it referred to a Panorama programme that was aired in 2016 focussing on the Cape Verde development that Mrs B invested in; a letter that the FCA sent to investors in 2017 and the fact that Mrs B's income payments from the Cape Verde development stopped some years earlier - it thought that likely happened sometime around 2019. As far as IFSL was concerned, these were all factors that ought to have highlighted earlier causes for concern for Mrs B. Therefore, it was of the opinion that she ought reasonably to have made her complaint sooner. As Mrs B didn't make her complaint until August 2023, IFSL felt she'd made the complaint too late.

Our Investigator was satisfied that Mrs B had made her complaint in time, so he went on to consider its substance. He concluded (in a response sent in March 2024) that there were failings in the advice process. And he thought it likely that if IFSL had provided further information and more in-depth analysis of Mrs B's circumstances and objectives – including

about the suitability of the underlying investments - it would have influenced her decision. The Investigator set out what IFSL needed to do to put things right.

IFSL didn't specifically object to the Investigator's conclusion that the complaint had been made in time. But it didn't say it agreed either. As far as the Investigator's findings on the substance of the complaint were concerned, IFSL said the only reasonable view that could be reached, based on the evidence available, was that Mrs B was an insistent client. It referred, amongst other things, to the prominence of the warnings it gave her (highlighted in bold) about the loss of valuable guarantees. It also disputed a suggestion that it had somehow encouraged Mrs B to reject its advice not to transfer. On top of that, it said its role in this process was to recommend whether or not it was sensible for Mrs B to transfer her DB pension. It was not involved at all in the investment recommendation – that was handled by another regulated business. Nevertheless, it described the proposed investment as a high-risk strategy. IFSL felt that Mrs B had enough time to change her mind - even after it had prepared its second financial report – as it sent a cooling off notice to her on 27 June 2011 giving her a further 30 days in which to do so. But Mrs B went ahead regardless.

The Investigator considered IFSL's response, but he wasn't minded to change his opinion. So, the complaint was passed to me to decide.

Mrs B sadly died on 24 August 2024.

My provisional decision

I sent Mrs B's estate and IFSL my provisional findings on 30 June 2025. I've reproduced the relevant findings below:

"*As I mentioned earlier, IFSL didn't object to our Investigator's findings about why he felt the complaint had been made in time. But it didn't indicate that it agreed either. So, for completeness, I'll say first that I also agree this complaint was made in time.*

The rules I'm required to follow are set out in the Dispute Resolution section (DISP) of the FCA Handbook. Those include specific timeframes within which a complaint has to be made. The rule that applies in this case is DISP 2.8.2. It says:

The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:

(2) more than:

> *(a) six years after the event complained of; or (if later)*
> *(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint; unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received; unless:*

(3) in the view of the Ombudsman, the failure to comply with the time limits in DISP 2.8.2 R or DISP 2.8.7 R was as a result of exceptional circumstances…

IFSL gave Mrs B advice to transfer her DB pension in June 2011. But she didn't complain to the Financial Ombudsman Service until early August 2023. Clearly that's not within six years of the 'event' being complained about. So, she didn't make her complaint in time in order to satisfy the first part of the rule.

I then need to consider, in the alternative, whether Mrs B brought her complaint within three years of when she became aware, or ought reasonably to have become aware, of a cause for complaint.

IFSL says that various events between 2016 and 2020 ought to have given Mrs B cause for complaint. And as she didn't complain until 2023, it's still of the opinion that she complained too late.

One such event is a Panorama programme aired in 2016, which apparently highlighted the risks associated with clients being encouraged to invest in overseas hotel complexes, such as the one Mrs B invested in. IFSL believes that ought to have given Mrs B cause for concern. If I was to agree with IFSL, I'd need to see persuasive evidence to show that Mrs B had seen the programme it's mentioned and was aware at that time of a problem concerning the advice she'd received from IFSL. I've seen no such evidence. Therefore, I can't fairly say that the airing of a television programme in 2016 ought reasonably to have given Mrs B cause for complaint.

Similarly, whilst it appears that the regulator sent letters to certain investors in 2017, I've seen no persuasive evidence to suggest that Mrs B received and read such a letter. So, I don't agree that this was a point at which Mrs B ought to have known of a cause for complaint either.

Further, IFSL believes that Mrs B ought to have known that income from the investment stopped around 2019. Therefore, it felt this was another point at which Mrs B ought to have realised that she had cause for complaint. I've thought carefully about this point too.

I can see that Mrs B received various SIPP statements in the years that followed the DB transfer. Some of those do suggest that rental income may have been received from the Cape Verde development for a period (insofar as it's listed as an incoming payment, but some statements also show a payment of a similar value as outgoing). It seems likely that the cessation of rental income in 2019 wouldn't have shown up until the July 2020 annual statement was issued. I agree with IFSL that the 2020 statement doesn't specifically show any rental income coming into the SIPP account. But, for the reasons I'll now outline, I'm not persuaded that ought to have given Mrs B cause for complaint in the way that IFSL seems to think.

I say that largely because the 2020 SIPP statement shows an overall increase in the value of the SIPP compared to that shown on a statement issued a couple of years before. So rather than it giving Mrs B cause for concern, it's entirely possible that an increased value may have given Mrs B some comfort. And again, whilst I've seen no mention of rental income in that particular statement, I'm mindful that would have been issued in the midst of a pandemic. Mrs B's investment was in an overseas hotel development, so the pandemic would undoubtedly have affected tourism around that time. And, even if Mrs B had noticed the lack of an incoming rental payment on the 2020 statement, it's plausible to think she may have thought that was connected to the global issues at the time, rather than anything to do with IFSL's advice.

However, given IFSL's comments, we asked Mrs B about her recollections surrounding rental payments ceasing. She explained that she didn't have much involvement in the transfer of her pension and that her husband dealt with most of the paperwork. Therefore, she wasn't entirely sure of the details regarding rental payments. It's clear from other evidence I've seen that Mrs B's husband was something of a driving force behind her decision to transfer her DB pension to a SIPP and invest in the Cape Verde development. According to Mrs B's own testimony, her husband led the conversations with the other

adviser and managed the associated paperwork. In that context I find it credible that Mrs B may not have known whether rental payments continued or not.

In the absence of more persuasive evidence to the contrary, I find it more likely than not that Mrs B realised she had cause for complaint in late 2021 when she approached her professional representative for advice. And as she then made her complaint in early August 2023 (within three years), I'm therefore satisfied that she brought her complaint in time. In turn, I'm satisfied it's a complaint that we have the authority to consider.

I'll now address the substance of this complaint.

Earlier in this decision, I set out some of the factors causing Mrs B to believe that IFSL's advice was flawed.

Before I explain my findings, I'll first set out some of the obligations on advisers like IFSL when giving advice about the potential transfer of a DB pension.

What was IFSL required to do?

Amongst other things, IFSL had to have regard to the Principles for Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS'). What I've set out below isn't a comprehensive list of all of the rules, regulations, and guidance that applied at the time IFSL gave Mrs B advice. But it is intended to provide useful context about the things I've taken into account when making my decision.

Principle 1 – a firm must conduct its business with integrity;
Principle 2 – a firm must conduct its business with due skill, care and diligence;
Principle 6 - a firm must pay due regard to the interests of its clients and treat them fairly.

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 deal with the obligations when giving a personal recommendation and assessing suitability. In particular:

COBS 9.2.1R requires firms to take reasonable steps to ensure that a personal recommendation is suitable for the client.

COBS 9.2.2R requires firms to, amongst other things, gather such information from the client as is necessary for them to understand essential facts about them. Such facts typically include things such as the client's investment experience; their attitude towards risk taking; their risk profile and information about their wider financial position, including regular financial commitments. That's important if they're able to properly assess the risk a client is willing and able to take and have the financial means to withstand those risks and any losses that might ensue.

COBS 19.1.6G, says:

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

IFSL's position

IFSL said its role was solely to advise Mrs B on whether a DB transfer was suitable for her. And it clearly believes it discharged its duty by telling her that a DB transfer wasn't advisable and that she shouldn't go ahead. It also indicated its involvement didn't extend to advising Mrs B about whether a SIPP was a suitable financial product for her or assessing the suitability of the underlying investments she wanted to make. As far as it's concerned, the fact this introduction came about via another regulated adviser (who Mrs B had clearly already been in discussion with) means it would have been for that adviser, not IFSL, to assess the suitability of the SIPP and the underlying investments.

Did IFSL do enough?

I don't agree with IFSL about the limitations of its role here regardless of the involvement of another regulated adviser. Mrs B approached IFSL for advice about whether it was advisable to transfer her DB pension. That was a pension that was very valuable to her because of the guaranteed benefits it included. Part and parcel of giving Mrs B suitable advice was about IFSL ensuring it understood Mrs B's circumstances and wider goals, including her income needs in retirement and any investments she wished to make (and the investment vehicle she intended to use) and whether they were suitable for someone with her risk attitude.

That's a position that the regulator has made clear. When thinking about the obligations in COBS 9 regarding suitability assessments, I also take the view that the adviser had to look at the suitability of the intended investment in order to consider the overall suitability of a transfer to a new pension. I say that in particular because COBS 9.2.2R requires the business to obtain the information necessary about its client to have a reasonable basis for believing its recommendation "meets his investment objectives" and that the client is able to "bear any related investment risks" and that he had "the necessary experience and knowledge" to understand those risks.

This makes it clear, I think, that the adviser is required to have an understanding of the client's objectives – and the risks related to those objectives. And that also means, in my opinion, that a business cannot ignore the client's intention of investing in what might be unregulated, or high-risk investments. If it doesn't consider those to be suitable in the client's case, it should say so – rather than presuming that the transfer is necessary in order for this to happen.

Further, the requirement to act honestly, fairly and professionally, (as set out in COBS 2.1.1) means, in my opinion, that a business mustn't seek to exclude or restrict any duty it has under the regulatory system. In other words, if COBS 9.2 required the business to consider the client's intended investment as part of its suitability assessment, it can't avoid that obligation by suggesting that the client engaged it to only consider the pension transfer in isolation.

And it's against that backdrop that I've considered IFSL's actions further.

From what I've read in the suitability report, there was clearly reticence on Mrs B's part to provide information about her wider circumstances. According to IFSL's notes, the only objective she was prepared to discuss was her desire to transfer to a SIPP to allow an investment in overseas property. I'm satisfied that IFSL does appear to have attempted to gather a broader range of information from Mrs B. And it explained to her that not discussing her wider aims and objectives could be to her detriment. It also said that, in the absence of further information being forthcoming, it had based its advice on what it believed to be complete information in relation to Mrs B's core objective to transfer to a SIPP. It also noted some (albeit brief) detail about the SIPP and the investments Mrs B was intending to make.

Again, ideally, IFSL would have had a much broader range of information upon which to base its recommendation. A key factor in considering whether it's advisable to give up a DB pension and its valuable guarantees and benefits is the amount of growth needed to replace those benefits. In Mrs B's case, IFSL thought it "unrealistic" that Mrs B's new plan could achieve a growth level of 9.7% in order to replace her DB benefits. Therefore, it seems highly unlikely that there was any prospect of exceeding those benefit levels either. And (based on a warning included in its second suitability report) IFSL thought that Mrs B would likely be worse off by transferring. I agree that's certainly a factor in suggesting that a DB transfer may not be suitable.

IFSL considered certain things concerning the investment vehicle Mrs B was intending to use. For instance, it thought about whether a stakeholder plan might be more suitable. But it ruled that out as it wouldn't allow the complex investments Mrs B was intending to make. It clearly also tried to assure Mrs B that the SIPP provider was established in the industry for providing the type of SIPP she wanted. It also told Mrs B that if the ongoing costs of the funds selected were higher than 1.2% (the ongoing running costs of the fund used to calculate the "break even" yield) then the funds would need to grow by even more to match the guaranteed benefits offered by the DB scheme. Along with its report, it said it had included a 'key features' document and it drew Mrs B's attention to the 'risk factors' section. Additionally, it explained the importance of the investments being regularly reviewed to ensure they continued to meet Mrs B's objectives and attitude to risk.

As far as the investment in the Cape Verde development was concerned, IFSL referred to it as "a high risk strategy" and said it "could not recommend such a course of action". But it then said that Mrs B was not looking for its guidance on this and merely wanted it to arrange the transfer for her. IFSL said "In summary you have instructed me to proceed with the transfer, and I am in no way advising you to do so."

IFSL took some of the steps I'd expect to see during a robust advice process. However, whilst noting the high risk and complex nature of the Cape Verde Investment, regardless of what IFSL understood its role to be, I'd have expected a more in-depth analysis of its suitability for Mrs B. That was important if it was able to give her a recommendation that took account of all relevant factors. That would likely also have included explaining the unusual features of this type of investment – ie that returns are not based on movements in investment markets, but on occupancy rates in the development. This type of investment is not generally suited to most investors and it was important that Mrs B understood that. In my opinion, IFSL's actions stopped short here, which means that I can't fairly say it fulfilled all of its regulatory obligations. I'll return to this later.

<u>Was the advice suitable?</u>

Gaps in an advice process wouldn't automatically cause me to say that advice and a personal recommendation were unsuitable.

I have to keep in mind here that IFSL had to assume that a transfer wouldn't be suitable, unless it could clearly demonstrate, on contemporary evidence, that the transfer or opt-out was in Mrs B's best interests. Again, a key consideration is whether the new scheme is capable of achieving (or exceeding) the growth needed to provide the same level of benefits as the DB scheme.

IFSL said it was unrealistic to expect the new scheme to achieve growth of 9.7% in order to provide the same level of benefits as the DB scheme. That was the driver for it saying it recommended Mrs B leave things where they were. It went even further in its second suitability report by saying that Mrs B would likely be worse off by transferring.

I agree that a critical yield thought to be "unrealistic" would certainly be a factor in saying that a transfer isn't suitable. But this assessment alone doesn't determine whether the whole DB transfer is suitable or not.

Notwithstanding the gaps in the advice and information process that I referred to earlier, IFSL was aware that Mrs B was looking to invest a large proportion of her assets in non-mainstream investments. It already thought Mrs B would be worse off by transferring before the impact of investment risk was felt. So that can only have heightened the risk further. Therefore, I'm inclined to agree that, on the face of it, a recommendation not to transfer her DB pension (with all of its valuable benefits and guarantees) appeared to be appropriate for Mrs B.

Is IFSL the cause of any loss suffered?

As I've noted earlier, Mrs B seemed to want to proceed with the transfer regardless of IFSL's advice. It therefore treated her as what's known as an 'insistent client'.

It's worth saying that at the time of IFSL's advice an insistent client wasn't defined in COBS. However, the common understanding has always been that it was a client who was given a recommendation, but decided to go against it, and who still wanted the firm to facilitate the transaction.

As I also said earlier, COBS 2.1.1R required a firm to "act honestly, fairly and professionally in accordance with the best interests of its client". COBS 4.2.1 stipulated that any information provided needed to be clear, fair and not misleading.

The regulator doesn't require businesses to generally refuse acting for clients after a negative recommendation. It's possible for clients to proceed on an insistent client basis. Although a few years after the advice in Mrs B's case, I've also taken into account that the regulator issued a factsheet to advisers in 2015, which was expected to serve as a 'helpful reminder' of the regulator's position when advising insistent clients. This followed a thematic review it had conducted on advice for insistent clients in 2014.

In the regulator's view, the key steps an adviser would be expected to take were as follows:

- *provide suitable advice for the individual client and this advice must be clear to the client;*
- *be clear with the client about the risks of their chosen course of action;*
- *it should be clear to the client that their actions are against the adviser's advice.*

Previous regulators as far back as 1994 had also set standards of what they would generally expect to see as evidence for an insistent client transaction. One of the common themes being evidence that the consumer had decided to go against the adviser's recommendation and that they had told the adviser, in their own words, why they wanted to go against their recommendation – rather than, say, signing a pre-populated template.

I've thought about this in the context of what happened in Mrs B's case.

In my opinion, IFSL set out a clear recommendation across two suitability reports (issued at least a week apart) stating it didn't advise Mrs B to transfer her pension. It also described DB transfers as "so dangerous" and gave her other information in bold under the heading "Warning". I'm satisfied that was deliberately intended to draw Mrs B's attention to its explanations and the risky nature of a DB transfer.

Further, on receipt of Mrs B's letter indicating in her own words, that she wanted to proceed regardless, IFSL told her in its second suitability report (issued a few days after receiving

Mrs B's letter) that "by transferring you will be worse off". I'm satisfied that meets the regulator's expectation of the adviser needing to clearly explain the risk of the client's intended course of action. That also didn't deter Mrs B. IFSL also told us that it sent Mrs B a 'cooling off' notice. Although I haven't seen a copy of that notice, IFSL said it was sent on 27 June 2011, which was after the second suitability report was issued and before the transfer was completed around July 2011. Clearly IFSL was intent on giving Mrs B a final opportunity to pause and re-think her intentions before the transfer was completed. But the notice clearly didn't cause Mrs B to change her mind.

Another important factor I have to return to here is whether Mrs B would have decided not to go ahead with the transfer had IFSL given her more detailed information - particularly about the nature of the investments she was intending to make. I've given very careful thought to this issue. And for the reasons I'll now outline, I'm not persuaded further information would have caused Mrs B to change her mind.

As I mentioned earlier, IFSL described Mrs B's intended investment strategy as "high risk" and "complex". That doesn't appear to have caused Mrs B any concern or led her to question things further with IFSL. And, as I've also said above, Mrs B's husband was clearly a driving force behind the decision to transfer their pensions into the Cape Verde investment. She explained that her husband handled all of the paperwork and the meetings with the third parties involved. In other evidence I've seen in connection with a linked complaint that Mrs B made (which was subsequently withdrawn) she added that, despite her reservations, her husband secured the investment on the basis that it was purported to be a sound investment. This leads me to conclude that, even if IFSL had given Mrs B further information about the nature of and risks associated with the investment she wished to make, she'd have gone ahead with the transfer anyway. Mrs B was clearly intent on making a joint investment with her husband. And I'm not persuaded that anything else IFSL might have said would have made a difference. Taking all of these factors into account, I can't fairly say IFSL is responsible for any loss that may have ensued from this transfer".

Responses to my provisional decision

IFSL confirmed receipt of the provisional decision, but said it had nothing to add.

The professional representatives acting for the estate sent me some comments to consider. They also urged me to reconsider my decision in light of those comments. For ease, I'll refer to the comments as being made by the estate.

In addition to quoting some of what I said in my provisional decision about shortcomings in the advice process, the estate have said the following:

- The regulator's factsheet to do with insistent clients, which was issued in 2015 (and which I also referenced in my provisional decision) actually says the following:

"You should be clear with the client <u>what</u> the risks of the alternative course of action are".

In addition:

- There was nothing clear or granular around the risks and unusual features of the actual proposed investment strategy, which would have properly explained matters in a way that would ensure Mrs B was properly informed. Or which might have caused her to question or rethink her intentions - notwithstanding what she was being told by third parties.

- This requirement is all the more important when "*as in this situation, you say that her*

husband was driving her to go against the advice of a financial services firm".

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 entirely understand the estate's strength of feeling about the matters leading to this complaint. And I can see, particularly given some of the comments I made about shortcomings in the advice process, why they might feel IFSL is responsible for the loss that Mrs B suffered.

I can assure the parties that I've given very careful thought to everything that's been said in response to my provisional decision. And whilst I'm sorry to disappoint the estate even further, nothing they've said causes me to change what I said in my provisional decision. For the reasons I'll now outline, I remain of the opinion that, ultimately, IFSL isn't responsible for the loss that Mrs B suffered.

The estate have directly quoted some of what I said about gaps in the advice process. As I make clear, IFSL didn't do everything it needed to do when giving Mrs B advice or when describing the high-risk and complex nature of the investments she was intending to make. That meant I couldn't fairly say it had fulfilled all of its regulatory obligations. But as I also made clear, "*gaps in an advice process wouldn't automatically cause me to say that advice and a personal recommendation were unsuitable".*

In Mrs B's case, I went onto conclude that IFSL gave her a suitable recommendation when advising her not to transfer her DB pension. And I also said, "*IFSL was aware that Mrs B was looking to invest a large proportion of her assets in non-mainstream investments. It already thought Mrs B would be worse off by transferring before the impact of investment risk was felt. So that can only have heightened the risk further".*

The estate pointed out that the regulator expected advisers to explain to the client *"what the risks of the alternative course of action are"* if they chose to proceed despite the recommendation not to. That's precisely what happened in Mrs B's case. IFSL told Mrs B that it didn't recommend the DB transfer due to the *"unrealistic*" prospect of her being able to achieve the level of investment returns she'd need from a new fund. It also described DB transfers *as "so dangerous"*. And it concluded by saying "*by transferring you will be worse off".* In my opinion, the last statement is unambiguous. Therefore, contrary to what the estate have said since, I'm persuaded that IFSL did outline what the risks of Mrs B's alternative course of action were. And I'm satisfied from the way that IFSL expressed those risks that Mrs B would have understood them.

Another point the estate makes is that there was nothing "*clear or granular*" around the risks and unusual features of the Cape Verde investment, which might have caused Mrs B to rethink her actions. They felt it was all the more important for IFSL to give Mrs B further information seeing as her husband was something of a driving force behind the idea.

Again, as I said in my provisional decision, there's more that IFSL could have done during the advice process. But, if I were to be persuaded by what the estate have said since, I'd need to be satisfied that any additional information given to Mrs B would have made the difference between her proceeding with her investment and not. For the additional reasons I'll now outline, I'm not persuaded it would have made a difference.

IFSL had already said "*I must state that this sounds like and is a high-risk strategy and I could not recommend such a course of action*". The fact that a financial adviser told Mrs B

her intended investment strategy was "*high-risk"* and that it wouldn't recommend such an investment, didn't cause Mrs B to question things further with IFSL. In my opinion, this would likely be enough of a warning for most people to at least pause their actions. But it didn't deter Mrs B at all.

Further, Mrs B's testimony shows that she had her own reservations about the investment. But she proceeded in any event because she wanted to make a joint investment with her husband. Again, this shows, in my opinion, a certain amount of determination on Mrs B's part – presumably because her husband and others involved had persuaded her it was a sound investment idea. It's difficult to see in those circumstances, in addition to the warnings it had already given (including about the DB transfer itself) what else IFSL could have said or done that might have persuaded Mrs B otherwise.

Taking account of all of these factors together, I remain of the opinion that even if IFSL had given Mrs B further information about the nature of and risks associated with the investment she wished to make, she'd have gone ahead with the transfer anyway. That means I can't fairly say it's responsible for the loss Mrs B suffered.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs B to accept or reject my decision before 28 August 2025.

Amanda Scott
Ombudsman