DRN-4297575

The complaint

Mr C 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 C 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 C had built up 21 years and 2 months' pensionable service in the BSPS. His annual scheme pension as at the date of leaving the scheme in May 2016 was £12,149.39. This would be revalued over the term to retirement by a prescribed amount.

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 to start to talk to the members in detail. This led to the *'Time to Choose'* communication pack being issued to members, including Mr C, in October 2017. The pack provided more detail about the three options available and was intended to help members choose an option.

Mr C initially indicated that he wanted to transfer to the BSPS2 and completed a form confirming this. But he remained 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 C to IFM. One of IFM's advisers recorded the following information about Mr C:

- He was aged 52, married and in good health. His wife was aged 46 and in good health. They had five financially dependent children aged between 10 and 20;

- He was employed full-time by Tata Steel and paid gross annual income of about £39,000. His wife was self-employed and withdrew an annual income of about £3,000 from her business;

- Their assets comprised the marital home (value not recorded) which was encumbered with a mortgage. They didn't have any savings or investments;

- Their liabilities comprised a repayment mortgage of about £124,000 on the marital home and credit card debt of about £20,000;

- After paying for bills and essentials, they didn't have any surplus disposable income available;

- 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 wasn't recorded). In addition, he was on course to receive the full state pension at age 67;

- His wife didn't have any private pension arrangements;

- He was an inexperienced investor with limited knowledge and experience of investments. He had little in the way of other assets or pensions to fund his retirement. 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 1 or *'Cautious'* risk*;* and

- His primary objective regarding his safeguarded benefits was to retire earlier than the BSPS normal retirement age of 65. He wanted to retire from age 57 or as soon as possible after that age.

Following the fact find meeting, IFM's adviser issued his suitability report in November 2017. This explained to Mr C that he had three options regarding his safeguarded benefits, as set out in the *'Time to Choose'* communication pack. IFM's adviser recommended that Mr C accept the transfer value of £316,772.36 offered by the BSPS and transfer to a PPP provided by Prudential 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

- 1.50% (or £4,700) – initial adviser charge for recommendation and implementation

Ongoing annual charges

- 0.65% investment annual management charge deducted from the PPP fund value
- 0.35% product fee deducted from the PPP fund value
- The basis of the recommendation was that following the pension transfer, Firm A, who introduced Mr C to IFM, would provide ongoing advice regarding the management and investment of the recommended PPP. In connection with this, IFM's adviser stated in the suitability report, *"It is important that your funds and financial planning arrangements are reviewed at regular intervals to ensure that they remain suitable. I understand this service will be provided by* [Firm A]*. The cost of this provision can be paid directly by you or can be taken from your pension fund on an ongoing basis. This is something you and* [Firm A] *will need to discuss and agree on."* The cost of that ongoing advice wasn't stated in the suitability report.

The transfer value analysis ("TVAS"), produced *after* the recommendation, showed that Mr C's estimated revalued annual scheme pension at age 65 was £17,136.91 on the basis he took a full scheme pension only. It calculated the critical yield to match that benefit as 7.5%. The calculation assumed 0% ongoing advice costs. The critical yield at age 57 – to align with the age at which Mr C wanted to retire – wasn't calculated.

Mr C accepted the recommendation, following which the transfer to the PPP was completed. IFM recommended that the PPP fund value be invested in the following funds to align with Mr C's '*Cautious'* risk profile:

Fund	**Allocation**	**Estimated annual growth rate before charges**
Prufund Cautious	30%	5.50%
Prufund Growth	70%	6.20%
Weighted estimated annual growth rate before charges was 5.99%		

During 2020, when he was aged 55, Mr C withdrew a tax-free cash lump sum of about £88,000 and a taxable withdrawal of £15,000 from the PPP. From 2022 he left the employment of Tata Steel and started working as a self-employed builder. At around the same time he started to withdraw taxable income of about £2,000 every month from his PPP to supplement his self-employed earnings.

This complaint

During 2022, Mr C complained to IFM about the suitability of its pension transfer advice. He thought that the advice had caused him to suffer a financial loss.

IFM didn't uphold this complaint. In summary, it stated that Mr C 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 C to transfer away so that he could obtain control of his safeguarded benefits and benefit from the flexibility to withdraw variable amounts of money from age 55 onwards and leave a lump sum to his beneficiaries on death. It was satisfied that it had adhered to and considered relevant FCA rules and guidance including providing Mr C 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 C's early retirement objective. In its view, the pension transfer to the PPP was in his best interests and so was therefore suitable.

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 C'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 C transferred to the BSPS2, retired at age 65 and would be a 20% income taxpayer in retirement. He acknowledged that Mr C had withdrawn benefits from his PPP from age 55 but had continued working on a self-employed basis. So he specified that the redress calculation should be run to age 65 because Mr C hadn't fully retired early and had no plans to do so.

Mr C accepted our investigator's assessment. IFM replied and stated that it didn't agree with the outcome and provided additional comments in response. It said that the investigator had failed to take into account Mr C motives for transferring. And it disputed that redress should be calculated on the basis that Mr C will retire at age 65 because he started withdrawing benefits from his PPP at age 55. Our investigator considered these comments but wasn't persuaded to change his view. 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.

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.

<u>*The FCA's applicable rules and guidance*</u>

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice but provides useful context for my assessment of IFM's actions here.

> PRIN 6 : *A firm must pay due regard to the interests of its customers and treat them fairly*
>
> PRIN 7: *A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading*
>
> COBS 2.1.1R: *A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule)*
>
> COBS 4.2.1R: *A firm must ensure that a communication or a financial promotion is fair, clear and not misleading*

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

Mr C's situation

The situation for Mr C 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 set out in the suitability report:

1. Transfer to the PPF;
2. Transfer to the BSPS2; or
3. Transfer to an alternative pension plan such as a PPP (the transfer value available was £316,772.36)

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.

Options 1 and 2 provided guaranteed lifetime income but there were differences between them for deferred members like Mr C. 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 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 option 3 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 better option for Mr C based on his personal circumstances and the uncertainty about when he would be able to retire. I note that Mr C initially indicated that he wanted to transfer to the BSPS2 and completed a form confirming this – so this supports my view. 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 C'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 C 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 C's safeguarded benefits, accounting for 21 years and 2 months' pensionable service, represented his most valuable asset. He had limited other assets that could be used to support his retirement income needs. His wife didn't have any private pensions. Given the lack of other assets, IFM ought to have recognised that Mr C and his wife would likely be heavily reliant on the value of his safeguarded benefits to generate a minimum level of core income to support their standard of living in retirement until state pension age. Given Mr C'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;

- Mr C had limited knowledge and experience of investments. He had a *'Cautious'* risk profile indicating he was at the lowest end of the investment risk spectrum. Transferring to the PPP led to the investment, inflation and longevity risks associated with his safeguarded benefits being transferred from the scheme to Mr C. Those risks would've been retained by the BSPS2 had he transferred to that scheme;

- The primary aim of the pension transfer was so that Mr C could retire early, from around age 57 if his financial situation allowed it. It was recorded that he was content to accept a lower pension income to achieve his objective. But he was then aged 52 and so couldn't access any benefits until age 55 at the earliest under the PPP. In my view, with such a time horizon 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;

- Had IFM advised Mr C 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 52;

- IFM failed to obtain the necessary information relating to Mr C'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 C'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 C's best interests to transfer at that time to achieve his early retirement objective or whether he could in fact retire early;

- So the basis of the advice wasn't to enable Mr C to retire immediately but at some indeterminate point in the future. I think this is a key point and proves that there was uncertainty regarding when Mr C would retire. I acknowledge that he accessed benefits in his PPP during 2020 when he was aged 55. This wasn't in line with his plan to withdraw benefits from age 57. Mr C accessed benefits after he left Tata Steel and started work as a self-employed builder. He didn't fully retire but instead remained self-employed. It's my view that Mr C only had the ability to access that money in the PPP due to the unsuitable advice provided by IFM – I don't think accessing money in the PPP transforms unsuitable advice into suitable advice. It's my view that had Mr C received suitable advice he would've retained his safeguarded benefits in the BSPS2 and, at the point he wanted to access benefits, could've considered his options at that time including a pension transfer, if then deemed suitable;

- 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 C 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;

- IFM recorded that Mr C preferred flexible income rather than guaranteed lifetime income. I'm not sure what this was based on. He had received guaranteed income all his working life and had a *'Cautious'* risk profile. So I think a guaranteed retirement income would've been valuable for an individual in Mr C's circumstances;

- IFM recorded that Mr C was *"prepared to accept more risk in return for greater flexibility over when and how benefits are withdrawn from your pension fund".* I'm not persuaded that it was appropriate for an inexperienced and *'Cautious'* risk investor to relinquish the guarantees attached to his main retirement provision in exchange for more risk so that he could access flexible benefits. There's no real evidence that Mr C required the flexibility of irregular lump sums or variable income during retirement. Flexibility and control might sound attractive, but I can't see that he had any concrete need for it. But if he did require it, then any flexible needs could've been met by his DC pension and tax-free cash available under the BSPS2;

- IFM recorded that Mr C was concerned about the security of his safeguarded benefits and wanted *"choice and 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. So it's unclear to me why he suddenly had a desire to do so. In my view, Mr C had limited knowledge and experience to enable him to understand the risks involved in transferring his safeguarded benefits;

- It was noted that Mr C was concerned about a transfer to the PPF at a later date. As an inexperienced investor who had enjoyed guaranteed employed income during his career, it's unclear to me on what basis an individual in Mr C's circumstances would decide that he didn't *"value the guarantee provided by the PPF"*. While I understand that he may have been concerned about the security of his safeguarded benefits, I don't consider a transfer to the PPF was an outcome to avoid. Under the PPF, Mr C 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 C 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 and *'Cautious'* risk 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%;

- A change in the format of death benefits was recorded as another reason for the transfer to the PPP. While I understand that death benefits are important to consumers, the priority here, in my opinion, was to advise Mr C about what was best for his own retirement provision. 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 C. It's my view that he didn't have any 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 family. 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;

- For the reasons stated above, I don't think there was any need to transfer to a PPP at that time. In the suitability report dated 21 November 2017, IFM inexplicably provided a generic critical yield figure rather than calculate the actual figure applicable to Mr C's safeguarded benefits. IFM's adviser stated, *"I can confirm that our analysis to date of the British Steel Scheme has shown that annual investment returns of typically around 8.0% p.a. are required in order to match the benefits available at 65 from the 'current' British Steel scheme".* Mr C signed the transfer discharge papers on the same day. Then on 28 November 2017, *after* the recommendation had been provided and accepted, IFM obtained a TVAS calculation produced by Prudential based on Mr C's specific circumstances. By that point, however, the information contained in the TVAS calculation was essentially meaningless in enabling Mr C making an informed decision;

- The TVAS calculation produced by Prudential showed that the critical yield to match the benefits under the BSPS at age 65 as 7.5%. This compared with a discount rate of 4.0% at age 65, as explained by our investigator in his assessment. It's my view that such a rate of required investment growth was incompatible with Mr C's *'Cautious*' risk profile, discount rate and the estimated annual growth rate of 5.99% (before charges) of the recommended investment strategy. I think these factors showed that it was likely Mr C would be financially worse off as a result of the pension transfer;

- Notwithstanding the above, I think the critical yield figure of 7.5% was incorrect. This is because the basis of the advice was that Firm A would provide ongoing advice to Mr C at a cost – but the cost wasn't taken into account when calculating the critical yield. Including that ongoing advice cost would've led to the critical yield being greater than 7.5%, which further increased the risk that Mr C would be worse off by transferring. In addition, the basis of the recommendation was that Mr C was seeking to take benefits at somewhere around age 57. If that was the case then I would've expected IFM to also calculate the critical yield figure at age 57 to enable Mr C to make an informed decision. But it didn't. I think this was a material oversight because the critical yield figure at age 57 would've been greater than 8.0% due to the shorter investment timeframe and impact of the initial advice charge on the required growth rate. This meant that Mr C wasn't provided accurate information about the level of investment growth required in the PPP to match the scheme pension if he took benefits earlier than age 65;

- IFM stated in the suitability report that at age 65 the BSPS would pay Mr C an annual pension of £12,464. But the TVAS showed the estimated revalued annual pension at age 65 was £17,136.91. IFM attempted to show in the suitability report the early retirement pension payable under the BSPS at age 60. It stated, *"For illustrative purposes only, if you were 60 now and retiring under the 'current' British Steel scheme, the annual pension would be c£10,200 per year or c£7,000 with a tax-free lump sum of £47,000".* But that illustration was potentially misleading for an inexperienced investor like Mr C. This is because that figure of £12,464 was the revalued pension as at 2017 when Mr C was aged 52 (rather than at age 60). It would need to be revalued to age 60 before the 18% reduction was applied. I think the way the information was presented may have misled Mr C to believe that the benefits payable by the BSPS at age 60 were lower than was actually the case;

- 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 C'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 critical yield and benefits payable by the BSPS at age 60. And it failed to provide sufficient information on alternative options to achieve Mr C's 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

Overall, I don't think the contemporaneous evidence supports the position as to why Mr C'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 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 C couldn't financially bear the risks involved in the pension transfer. I haven't seen any evidence that persuades me the pension transfer was in his best interests compared to the alternative option of transferring to the BSPS2. In conclusion, I've decided that the advice didn't comply with COBS 9.2.1R(1) or 9.2.2R(1) and wasn't in line with the guidance in COBS 19.1.6G. 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 C, as far as possible, into the position he would now be in but for the unsuitable advice he was given. My view is aligned with that of our investigator.

Our investigator concluded that, if properly advised, Mr C would've transferred to the BSPS2 and his benefits would now be preserved in that scheme. I'm not convinced that it could be reasonably determined at the time that the PPF was the likely better option for Mr C. 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 C 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 C'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 C redress as a cash lump sum payment,
- explain to Mr C 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 C receives could be augmented rather than receiving it all as a cash lump sum;
- if Mr C accepts IFM's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr C 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 C's end of year tax position.

Redress paid to Mr C 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 C'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 C the compensation amount as set out in the steps above, up to a maximum of £160,000. Where the compensation amount doesn't exceed £160,000, I would additionally require Inspirational Financial Management Ltd to pay Mr C any interest on that amount in full, as set out above. Where the compensation amount already exceeds £160,000, I would only require Inspirational Financial Management Ltd to pay Mr C any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Inspirational Financial Management Ltd pays Mr C the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr C.

If Mr C 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 C can accept this final decision and go to court to ask for the balance. Mr C 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 C to accept or reject my decision before 24 November 2023.
Clint Penfold
Ombudsman