DRN-4106486

The complaint

Mr K has complained about the suitability of the advice provided by Inspirational Financial Management Ltd ("IFM") in September 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 K 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 K had built up 28 years and 6 months' pensionable service in the BSPS between November 1987 and May 2016. His annual scheme pension as at the date of leaving the scheme was £18,134.91. This would be revalued over the term to retirement by a prescribed amount (by June 2017 it had been revalued to £18,605.28).

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

1. Transfer to the PPF;
2. Transfer to the BSPS2; or
3. Transfer to an alternative pension plan such as a PPP (the BSPS offered a transfer value of £466,080.34 in June 2017)

Mr K 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 K to IFM. On 7 August 2017, the following information about Mr K and his wife was recorded by IFM in a document titled *'Pension Review Questionnaire'*:

- He was aged 52 and his wife was aged 51. They were both in good health. They had three adult children who weren't financially dependent on them;

- He was employed full-time by Tata Steel and paid gross annual income of about £31,000. He didn't expect his employment status to change in the foreseeable future, although he planned to retire from age 55 at the latest;

- His wife was employed as a teaching assistant by the local council and paid gross annual income of about £9,000;

- Their assets comprised the marital home, the value of which wasn't recorded. They had about £65,000 in cash savings which was earmarked as an emergency fund. They didn't have any other savings or investments;

- They didn't have any debt or liabilities (the marital home was owned outright);

- After paying for bills and essentials, they had surplus disposable income of about £1,800 available every month;

- In addition to the value of his safeguarded benefits in the BSPS, he had been a member of Tata Steel's defined contribution ("DC") workplace 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. He was also on course to receive the full state pension at age 67;

- No details were recorded about his wife's private pension arrangements; and

- Through his employment he had a lump sum death in service benefit based on a multiple of six times' his salary.

In September 2017, terms of the BSPS re-structure were confirmed enabling trustees to start to talk to members in detail about their options.

On 15 September 2017, IFM's adviser issued his suitability report. This explained to Mr K that he had three options regarding his safeguarded benefits, as previously communicated by the BSPS. IFM's adviser stated in the suitability report that Mr K's primary objective regarding his safeguarded benefits was to retire earlier than the BSPS normal retirement age of 65, preferably at age 55 and, from that point, receive an income of about £1,500 per month. It was noted that Mr K would withdraw that level of income from his PPP and reduce it by the same amount of the state pension once that started to be paid from age 67. There was also reference to Mr K preferring to draw flexible benefits, obtaining control over the value of his benefits and to maximise the death benefits available to his family.

IFM obtained a transfer value analysis ("TVAS") report produced by Prudential. This showed that Mr K's estimated revalued annual scheme pension at age 65 was £25,797.85 on the basis he took a full scheme pension only. It calculated the critical yield to match that benefit as 7.7%. The calculation assumed 0% ongoing advice costs. The critical yield at age 55 – to align with the age at which Mr K wanted to retire – wasn't calculated.

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

IFM's adviser discounted the PPF and BSPS2 options and instead recommended that Mr K accept the transfer value of £466,080.34 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 charges associated with the recommendation and deducted from the PPP fund value were as follows:

<u>*Initial advice charge*</u>

- 1.07% (or £5,000) – initial adviser charge for recommendation and implementation

<u>*Ongoing annual charges*</u>

- 0.65% investment annual management charge

- 0.35% platform charge

- The basis of the recommendation was that following the pension transfer, Firm A, who introduced Mr K 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.

Mr K 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 K's '*Moderate'* 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%		

Following the pension transfer, Mr K retired in June 2020 when he was aged 55 – in line with the recorded objective.

<u>*This complaint*</u>

During 2022, Mr K, complained to IFM about the suitability of the pension transfer advice it had given him in 2017 after the regulator, the FCA, contacted him to make him aware that he may have been given unsuitable advice. Based on what the FCA had told him, 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 K 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 K to transfer away so that he could obtain control of his safeguarded benefits. It said that he wanted to retire at age 55 and withdraw benefits flexibly. Overall, it was satisfied it had adhered to and considered relevant FCA rules and guidance including providing Mr K 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 K's objectives. In its view, the pension transfer to the PPP was in his best interests and so was therefore suitable.

In March 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 K's best interests compared to the alternative options. He thought suitable advice would've been to transfer to the PPF on the basis of prospective early retirement at age 55. 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 K transferred to the PPF, retired at age 55 and would be a 20% income taxpayer in retirement. In addition, he recommended that IFM pay Mr K £200 compensation for the trouble and upset caused by its unsuitable recommendation.

Mr K 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 K 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 K were set out in COBS 9.2. The relevant rules were COBS 9.2.1R and 9.2.2R.

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

COBS 19.1.2R required the following:

"A firm must:

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

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

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

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

And COBS 19.1.3 G stated:

"In particular, the comparison should:

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

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

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

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

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

Under the heading "Suitability", the following was set out:

COBS 19.1.6G:

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

COBS 19.1.7G:

"When a firm advises a retail client on a pension transfer, pension conversion or pension opt-out, it should consider the client's attitude to risk including, where relevant, in relation to the rate of investment growth that would have to be achieved to replicate the benefits being given up."

COBS 19.1.7B:

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

COBS 19.1.8G:

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

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

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

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

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

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

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

The situation for Mr K 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 repeated in IFM's suitability report.

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

The PPF and BSPS2 options provided guaranteed lifetime income but there were differences between them for deferred members like Mr K. 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 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. It was known at the time of the advice that the PPF would pay a higher level of income and tax-free cash than the BSPS2 on early retirement. Given the FCA's position, it's my fair and reasonable opinion that IFM should've considered that the PPF was likely to be the better option for Mr K based on his circumstances and objectives. And so IFM should've only recommended a transfer to the PPP in favour of the PPF if it could clearly demonstrate it was in Mr K'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 K 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 K's safeguarded benefits, accounting for 28 years and 6 months' pensionable service, represented his most valuable asset. Other than £65,000 held in cash savings, 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 K 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. In my view, Mr K had limited capacity for loss. He was planning on retiring within a few years and so couldn't replenish any losses through employed income. So I think it was important not to expose the value of his safeguarded benefits to unnecessary risk by treating flexibility, control and maximisation of death benefits as a high priority at the expense of the primary income purpose – unless there was a clearly suitable reason to do so;

- According to the suitability report, the primary aim of the pension transfer was so that Mr K could retire early at age 55. 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 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;

- I think the suitability report misled Mr K about the ability to take early retirement benefits under the PPF option. It stated, *“Early retirement is unlikely to be an option under the PPF”.* This is incorrect since the PPF permits members to take benefits early from age 55 onwards subject to a reduction. This misleading statement likely led to Mr K discounting the PPF as an option when, in my view, it was the most suitable option for him;

- IFM stated that early retirement at age 55 was allowed under the BSPS subject to a 30% reduction in the annual pension income. It stated that early retirement under the BSPS2 would likely be subject to a similar reduction. I think it portrayed the reduction as a penalty. But it wasn’t a penalty. Rather, the reduction was applied to reflect the fact that the scheme would have to support the income for longer than anticipated, and to protect the interests of scheme members generally. And so, based on what IFM said, it’s likely Mr K incorrectly believed he would be unfairly treated if he took benefits early under the alternative options;

- IFM stated in the suitability report, *“Your deferred pension available at age 65 currently stands at a full pension of £18,605”.* But that was the revalued annual pension in June 2017 when Mr K was aged 51. According to the TVAS report produced on 15 September 2017, the estimated revalued annual pension at age 65 in 2030 was £25,797.85. So the reference to £18,605 at age 65 was misleading;

- IFM’s adviser attempted to show in the suitability report the early retirement pension payable under the BSPS at age 55. He stated, *“For illustrative purposes only, I estimate that if you were 55 now and retiring under the ‘current’ British Steel scheme, the pension would be in the region of £13,000 per year or £9,200 if you took the tax-free cash sum of £61,500”.* But that illustration was potentially misleading for an inexperienced investor like Mr K. This is because that figure of £18,605 would need to be revalued to age 55 before the 30% reduction for early retirement was applied – but IFM applied it to the revalued annual pension in June 2017 when Mr K was aged 51. I think the way the information was presented may have misled Mr K to believe that the benefits payable under the alternative options at age 55 were lower than was actually the case;

- IFM portrayed the PPP option as allowing for early retirement earlier than age 65 without penalty. I think this was misleading. The reality was of course that the PPP would’ve had less time to grow if accessed earlier than age 65 and any resulting income would need to last longer. I cannot see that this was adequately explained to Mr K 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 to a PPP from an uninformed position in this regard;

- As noted above, the basis of the advice wasn’t to enable Mr K to retire immediately but instead in a few years at age 55. It was recorded that Mr K’s annual retirement income need from age 55 was £1,500 per month. But 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 figure of £1,500 per month was established. 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 K's case, it seems that he simply provided a notional figure of £1,500 per month without IFM seeking to scrutinise or 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 IFM's approach was appropriate because without scrutinising and understanding Mr K's retirement income need it's difficult to conclude that the pension transfer to the PPP was clearly demonstrated to be in his best interests;

- Overall, it's my view that IFM failed to obtain the necessary information relating to Mr K's financial situation including his anticipated income and expenditure during retirement when assessing whether it was suitable for him to transfer to a PPP to achieve his early retirement objective. It may well have been the case that Mr K's retirement income need could've been met by the PPF but IFM failed to establish this. Ultimately, however, there's insufficient evidence to demonstrate why it was in Mr K's best interests to transfer to a PPP at that time to achieve his early retirement objective;

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

- IFM recorded that Mr K preferred flexible income rather than guaranteed lifetime income. But it also recorded that Mr K regarded a fixed guaranteed income being important to him and that he didn't prefer a less secure adjustable income. Mr K had received guaranteed income all his working life. So I think a guaranteed retirement income from another source such as the PPF before state pension age would've been valuable for an individual in his circumstances, but IFM steered him away from that option by incorrectly stating early retirement was unlikely to be an option under the PPF;

- IFM recorded that Mr K was *"prepared to accept more risk in return for greater flexibility over when and how benefits are withdrawn from your pension fund".* Flexibility and control might sound attractive, but I can't see that Mr K 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 K 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 cash savings of £65,000, DC workplace pension and the tax-free cash under the PPF. This doesn't appear to have been adequately considered by IFM;

- Mr K and his wife had surplus disposable income of about £1,800 available every month. There's inadequate evidence that IFM considered saving some of these additional monies in either a pension, investment or savings account to provide flexible income or lump sums rather than transferring and losing benefit guarantees;

- IFM recorded that Mr K was concerned about the security of his safeguarded benefits and so wanted *"control"* over his pension. But he appears to have been a largely passive pension saver up until that point. In my view, Mr K had limited knowledge and experience to enable him to understand the risks involved in transferring his safeguarded benefits;

- It was noted that Mr K was concerned about a transfer to the PPF. While I understand that he may have been concerned about this, I don't consider a transfer to the PPF was an outcome to avoid. Under the PPF, Mr K 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 K 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 *'Moderate'* 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%. This doesn't make sense to me;

- The suitability report mentioned that Mr K wanted to ensure any unused pension benefits be inherited by his family. While I understand that death benefits are important to consumers, the priority here, in my opinion, was to advise Mr K about what was best for his own retirement provision. He was in good health at the time. Withdrawing money from the PPP to meet income and lump sum needs would likely mean that the size of the fund remaining in later years – when death is more likely – could be much smaller than expected. I can't see that this was explained to Mr K. Through his employment he had a generous lump sum death in service benefit which was applicable until his expected retirement at age 55. In addition, the value of his DC workplace pension plan would be payable as a tax-free lump sum. So it's clear his wife would receive a large (relative to what was recorded about their wider financial situation) lump sum death benefit from other sources in the event of his death. And if this was deemed insufficient, the surplus disposable income they had available could've been used to obtain life cover to provide a lump sum on death. These factors don't appear to have been adequately considered by IFM;

- It's my view that Mr K 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 his wife. 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;

- The TVAS calculation showed that the critical yield figure to match the benefits under the BSPS at age 65 was 7.7%. This compared with a discount rate of 4.0% at age 65, as explained by our investigator in his assessment. For further comparison, the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2% per year. It's my view that a required investment growth rate of 7.7% was incompatible with Mr K's *'Moderate*' 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 K would be financially worse off as a result of the pension transfer;

- Notwithstanding the above, I think the critical yield figure of 7.7% was incorrect. This is because the basis of the advice was that Firm A would provide ongoing advice to Mr K 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 7.7%, which further increased the risk that Mr K would be worse off by transferring. In addition, the basis of the recommendation was that Mr K 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 K 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 7.7% due to the shorter investment timeframe and impact of the initial advice charge on the required growth rate. This meant that Mr K wasn't provided accurate information about the level of investment growth required in the PPP to match the scheme pension if he took benefits early at age 55;

- The wording of the suitability report inappropriately downplayed the importance of the critical yield, stating that it will add *"no value to the process"* and *"the results of a TVAS are largely academic".* I think IFM's approach to the transfer analysis was improper and prevented Mr K from making an informed decision; and

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

Conclusion

In my view, Mr K's objectives of achieving early retirement, income flexibility, flexible death benefits and control over investment choice were recorded in a generic way, suggesting that IFM used a standardised templated approach to pension transfer advice. There's no evidence that the stated objectives were properly explored, scrutinised and challenged by IFM to ensure they were appropriate and achievable.

Overall, I don't think the contemporaneous evidence supports the position as to why Mr K'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 age, 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 K 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 K gaining any clearly defined advantage compared to the alternative option of transferring to the PPF 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 K, 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.

At the time of the advice Mr K was aged 52 and the contemporaneous evidence indicated that he wanted to retire at age 55 – which is precisely what he did.

Based on these factors, it's my view that the PPF rather than the BSPS2 was likely to be the better option for Mr K. I recognise that there would be a 10% reduction in the starting pension entitlement within the PPF and that income in respect of service before 6 April 1997 wouldn't escalate in payment. The BSPS2 wouldn't cut the starting entitlement for deferred members. But the reduction for early retirement under the PPF, proposed here at 55, was lower and would likely have more than offset the 10% reduction. The commutation factor for converting pension income into tax-free cash was also slightly more favourable under the PPF compared to the BSPS2 – and it's my view that maximum tax-free cash was attractive to Mr K. And so both the starting income and the tax-free cash would likely have been higher under the PPF compared to the BSPS2 at age 55. So, compensation should be based on Mr K taking benefits from the PPF at age 55.

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 Mr K 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 K's acceptance of my final decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, IFM should:

- calculate and offer Mr K redress as a cash lump sum payment,

- explain to Mr K 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 K receives could be augmented rather than receiving it all as a cash lump sum;

- if Mr K accepts IFM's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr K 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 K's end of year tax position.

Redress paid to Mr K 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 K'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.

In addition, IFM should pay Mr K £200 compensation for the trouble and upset caused by its unsuitable recommendation, as recommended by our investigator.

My final decision

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

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

If Mr K accepts my final decision, the money award becomes binding on Inspirational Financial Management Ltd. My recommendation wouldn't be binding. Further, it's unlikely that Mr K can accept my final decision and go to court to ask for the balance. Mr K may want to consider getting independent legal advice before deciding whether to accept my final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 8 January 2024.
Clint Penfold
Ombudsman