DRN-4096358

The complaint

Mr H's representative has complained, on his behalf, that Inspirational Financial Management Ltd gave him unsuitable advice to transfer his defined benefits from his occupational pension scheme (OPS) – the British Steel Pension Scheme (BSPS) – to a Personal Pension Policy (PPP).

What happened

The investigator who considered this matter set out the background to the complaint in his assessment of the case. I'm broadly setting out the same background below, with some amendments for the purposes of this decision.

In March 2016, Tata Steel UK Ltd 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 preserved 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 defined benefit pension schemes when their employer becomes insolvent. The BSPS was closed to further benefit accrual from 31 March 2017.

In May 2017, the Pension Protection Fund (PPF) made the announcement that the terms of a Regulated Apportionment Arrangement (RAA) had been agreed. That announcement said that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr H's employer would be set up – the BSPS 2.

This was, however, intended to receive deferred benefits only. The main defined benefit OPS had been replaced by a new defined contribution scheme. The existing scheme was due to be closed in the near future, with the options being set out in a subsequent letter in October 2017 for deferred members to either transfer their benefits to the successor scheme, BSPS 2, the Pension Protection Fund (PPF) or into a private arrangement, such as a PPP.

Mr H met with an adviser from Inspirational in October 2017 to discuss his retirement planning needs. His circumstances were recorded as follows:

- He was 50 and married, with no dependants
- He'd accrued over 33 years' service in the BSPS
- He was in good health
- He was earning around £38,000 pa, with around £500 pm joint disposable income
- He had few other assets upon which he could rely in retirement
- He had a cautious/balanced, or "conservative" attitude to investment risk
- He had an outstanding mortgage of around £18,000

His options at that time were to:

1) Remain in the BSPS which would then become part of the PPF
2) Transfer to the BSPS 2

3) Transfer out of the BSPS into a money purchase pension arrangement

Mr H had answered the fact find questions regarding his attitude to risk. In summary, Mr H indicated that he'd like to take pension benefits in four years if his financial situation allowed, but he wasn't comfortable with losses greater than 5% and would tend towards a lower risk/reward investment approach.

However, he also said that he would be prepared to wait out any short-term losses and worried more about the compounding effect of inflation rather than returns in any given short-term period.

Mr H's primary objective was recorded as being to achieve greater flexibility when drawing benefits from his pension funds. It was also noted within the fact find that Mr H wanted to retire at 55 if possible and increase any dependants' pension to be available as a lump sum benefit so long as it did not reduce his own income. Also noted were his desire for security, control, breaking ties with the employer, and desire to improve the available benefits.

Inspirational issued a suitability report dated 1 November 2017. It recommended that Mr H transfer his OPS benefits to a Royal London PPP which was to be invested in the 'Royal London Governed Portfolio 3 Fund'.

Inspirational noted the reasons for the transfer as having the flexibility to retire early and begin receiving an income accordingly, while avoiding any 'restrictions' associated with joining the BSPS 2 or the PPF.

Mr H accepted Inspirational's recommendation, and the application form was signed and dated 1 November 2017 - and received by Royal London on 7 November 2017. The amount transferred was £393,144.

Mr H's representative complained to Inspirational about the advice he'd been given in a letter dated 17 February 2022.

Inspirational declined to uphold Mr H's complaint, saying in summary that Mr H's objectives could only be achieved by transferring his pension away from the PPF/BSPS2. It also asserted that Mr H's attitude to risk and financial experience supported the recommendation.

Having considered the complaint, the investigator thought that it should be upheld. He said the following in summary:

- On the basis of the available contemporaneous evidence, he considered that Mr H's highest priority was the ability to retire earlier than the scheme retirement age of 65.

- Retirement at 55 was preferable to Mr H, so the investigator considered whether this was a realistic objective.

- Mr H and his wife were both within five years of age 55, but the joint income/expenditure assessment in retirement undertaken by Inspirational wasn't a realistic way of determining the viability of early retirement. There were no details about Mrs H's likely retirement income, and this would have been lower than her existing income.

- There would also need to have been other savings to make early retirement affordable. It was noted that there was £500 pm disposable income, but Mr and Mrs

H had no other savings, and so it seemed that the disposable income was at that time being spent.

- Where there were inconsistencies such as a budget suggesting low outgoings compared to current income – but with no savings – further conversations should have been held to understand whether Mr and Mrs H could give up the things they were spending money on at the time.

- The suitability report had said that early retirement wasn't possible under the PPF, but this wasn't the case – all three options would have allowed Mr H to retire early, and the PPF had preferential reduction rates for early retirement. The revaluation rates for deferred benefits between the PPF and the BSPS 2 would have differed, however.

- Although there were reductions in the benefits payable from the OPS for early retirement, this was to reflect the longer period over which the benefits would be payable. This was similar to the lower potential of a money purchase pension fund to grow, and indeed be sustained, if accessed early.

- But by remaining in either the BSPS 2 or the PPF, the investment risk would have been borne by the scheme, whereas after transferring this would have been borne by Mr H.

- The advice had been after the regulator had given instructions in final guidance FG17/9 as to how businesses could calculate future "discount rates" for complaints about transfers which were being upheld. Prior to that, this service was publishing information with which businesses could calculate future "discount" rates.

- Whilst businesses weren't required to use these when giving advice, they nevertheless provided a useful guide as to the kinds of returns deemed feasible at the time of the advice.

- The discount rate was 4.2% pa for the period up to Mr H's normal retirement date (65), and 3% up to age 55. Inspirational hadn't been able to provide a TVAS (a pension transfer analysis report), but the suitability report quoted the required critical yield to match the BSPS benefits at 65 as being 8%. For the PPF, this was 4%.

- But as the main basis for the recommendation was early retirement, it was a significant omission for the critical yields required for this not have been quoted.

- Previous experience of such critical yield figures demonstrated that, over the shorter term they tended to be higher, and the discount rate also reduced over a shorter term.

- Pension illustration growth rates set by the regulator were 2%, 5% and 8% for low, medium and higher projected returns respectively, and so the likely critical yields for early retirement were higher than these.

- Taking these figures into account, the critical yields weren't reasonably achievable, and there was no reasonable prospect of Mr H improving upon the scheme benefits.

- The assessment of the income which Mr H could take from the PPP (to correspond with the same income as that available from the scheme at age 55) determined that Mr H's fund would be valued at around £100,000 by age 99.

- On the face of it, this seemed to demonstrate financial viability, but this assumed a preparedness to accept a medium level of investment risk. Mr H had very few assets upon which to rely – and little time if early retirement was the objective - if he needed to recoup losses in his pension fund. Mr H didn't have the capacity to risk such potential losses.

- Mr H had a "conservative" attitude to risk, and had indicated that he was only prepared to accept a 5% loss in his pension fund. He's also previously only accepted small risks in his financial affairs and was only prepared to take low risk with his investment decisions. And where Mr H was prepared to engage with risk, this seemed to have been on the understanding that he had a long term horizon in which he could expect his fund value to recover.

- Mr H wasn't therefore prepared to accept the level of risk assumed in the drawdown analysis. The prospective returns used by Inspirational were too high, given that the PPP provider itself used a capped mid band growth rate in its illustrations of 2.4% pa.

- Inspirational hadn't therefore projected the returns which Mr H might expect from the PPP appropriately – and there was consequently doubt as to the sustainability of the use of drawdown from age 55.

The investigator recommended that Inspirational undertake a loss calculation in accordance with the regulator's guidance and on the basis that Mr H would have opted to join the BSPS 2. In support of this, he said that the PPF would provide a more favourable early retirement discount, but at the cost of both an initial 10% reduction in the benefits payable and potentially less favourable revaluation and escalation rates.

On the basis that the investigator considered Mr H should have been advised that retirement at 55 wasn't in any case likely to be financially viable, his awareness of the differences between the PPF and the BSPS 2, and the shortfall in Mr H's desired income and effects of inflation on spending power over time, he thought that Mr H would have been more likely to retire closer to 65 than 55.

Mr H would have benefitted more from the starting income in the BSPS 2 and so it was that scheme which should be used in the calculation, he said, and on the basis of retirement at the normal scheme retirement age of 65.

He further noted that the guidance contained in FG17/9 would shortly be superseded by new guidance – and so Inspirational should await this before undertaking the redress calculation.

He said that any redress should in the first instance be paid to Mr H's pension plan, but if this wasn't possible, it should be paid directly to Mr H, with a notional deduction for the (assumed basic rate) income tax he would have paid on the pension benefits.

Mr H's representative accepted the investigator's conclusions, but Inspirational didn't respond.

As agreement hasn't been reached on the matter, it's been referred to me for review.

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.

And having done so, I've reached similar conclusions to those set out by the investigator, and for broadly the same reasons.

When considering what's fair and reasonable, and in accordance with the Financial Services and Markets Act 2000 (FSMA) and DISP, I need to take into account relevant: law and regulations; regulators' rules, guidance and standards, and codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

The applicable guidance, rules, regulations and requirements

This isn't a comprehensive list of the guidance, rules and regulations which applied, but provides useful context for my assessment of the business' actions here.

Within the FCA's handbook, COBS 2.1.1R required a regulated business *to "act honestly, fairly and professionally in accordance with the best interests of its client".*

The FCA's suitability rules and guidance that applied at the time Inspirational advised Mr H were set out in COBS 9. The purpose of the rules and guidance is to ensure that regulated businesses, like Inspirational, take reasonable steps to provide advice that is suitable for their clients' needs and to ensure they're not inappropriately exposed to a level of risk beyond their investment objective and risk profile.

In order to ensure this was the case, and in line with the requirements COBS 9.2.2R, Inspirational needed to gather the necessary information for it to be confident that its advice met Mr H's objectives and that it was suitable. Broadly speaking, this section sets out the requirement for a regulated advisory business to undertake a "fact find" process.

There were also specific requirements and guidance relating to transfers from defined benefit schemes – these were contained in COBS 19.1.

COBS 19.1.2 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."*

Under the heading *"Suitability"*, COBS 19.1.6 set out the following:

"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 19.1.7 also said:

"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."

And COBS 19.1.8 set out that:

"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."

I've therefore considered the suitability of Inspirational's advice to Mr H in the context of the above requirements and guidance.

Inspirational's rationale for transferring

Mr H wasn't categorised as an "execution only" or insistent client, and Inspirational was taking him through the advice process. Therefore, Inspirational could be confident that he would be acting upon its advice.

In accordance with COBS 9.2.2R, fact finding was undertaken for Mr H and his circumstances and objectives were recorded – as I've noted above.

I've noted above within the FCA's guidance that the starting assumption for an assessment of Mr H's options was that a transfer would be unsuitable, unless it could clearly be demonstrated that it was in his best interests in order to meet specific objectives.

And so I'll therefore explore these objectives further below. But initially, I'll consider the advice to transfer from a purely financial perspective – so, in broad terms, how likely was it that Mr H would be better off financially as a result of the transfer.

The financial case to transfer

Inspirational obtained a transfer report for comparison purposes to determine the viability of the transfer to meet Mr H's objectives from a financial perspective – although I note that this hasn't been provided. As commented by the investigator, however, the critical yields to age 65 were quoted within the suitability report.

The suitability report was issued after the FCA's revised guidance which was released in late October 2017, and which provided "discount rates" for levels of growth which were deemed achievable for particular time periods until prospective retirement. Before that, similar rates were published by this service. As noted by the investigator, businesses weren't required to reference these when providing advice on transfers, but they would nevertheless have been a useful indicator of the type of investment return deemed feasible at the time.

The discount rate deemed achievable for the number of years left to the scheme retirement age of 65 was 4.2% pa, and 3% to age 55. And the mid band growth rate used to illustrate the benefits which might be payable from a PPP was 2.4%.

The critical yield to age 65, at 8% for the BSPS, therefore comfortably exceeded both the discount (or growth) rate deemed achievable over the same period, and the mid band growth rate used by the pension provider – which might perhaps be a reasonable assumption for a "medium" risk investor (even though Mr H was recorded as being a conservative investor).

The above critical yield was calculated on the basis of the BSPS benefits, rather than the BSPS 2 benefits. The critical yield to match those which would be produced by the PPF at age 65 was quoted as being 4% pa.

Given what was known about the proposed BSPS 2 and Mr H's own projected benefits, I think it ought to have been possible to produce critical yields for that proposed successor scheme as well. But in the absence of those, I think that assuming critical yields somewhere between those for the BSPS and the PPF wouldn't be unreasonable in estimating those which might be required for the BSPS 2. But these would still have been higher than the growth rate which would reasonably have been projected for an investor such as Mr H.

And as set out by the investigator, given that the main premise of the transfer was early retirement, I think that Inspirational should have provided the critical yields to retirement at age 55. But in the absence of those, I think it's reasonable to say that they were likely to be higher still than those to age 65.

I think it's more likely than not that the critical yields were in fact unachievable, year on year, for the number of years that Mr H had until he reached either early or normal retirement age. And as a reminder, these growth rates were required to just match the scheme benefits.

From a financial perspective, there needed to be a realistic chance that the benefits of the scheme could be bettered through transferring. And as set out above, the guidance was that it needed to be clearly demonstrated that the transfer would be in Mr H's best interests. As such, my view is that the transfer couldn't be justified from a financial perspective, especially given the valuable guarantees which Mr H would be relinquishing.

But the feasibility of achieving a critical yield alone wouldn't in any case indicate suitability of a transfer, as set out in COBS 19.1.7B.

The requirement for control and flexibility - and early retirement

Before I assess these objectives in greater detail, I think it's firstly fair to say that Inspirational did provide warnings on the guarantees which would be relinquished, but as Inspirational will be aware, risk warnings alone wouldn't render unsuitable advice suitable. And irrespective of the detail contained in a recommendation report, this also wouldn't make otherwise unsuitable advice suitable. Inspirational needed to be satisfied, before providing its recommendation, that relinquishing the guarantees and taking the investment risk was a suitable course of action for Mr H.

As I've said above, Inspirational's reasoning for the recommended transfer was that Mr H required flexibility of income due to his particular circumstances, objectives – notably to retire early if possible - and concerns about the employer and the pension scheme. And so I've given this argument careful consideration.

I'd initially say that, even without investment experience or other significant assets, I do acknowledge that Mr H may have understood the principle of risk/reward which would be associated with flexible income drawdown, and that there may have been discussions around such concepts with colleagues who were going through the same process.

But I have similar concerns to those expressed by the investigator regarding Mr H's risk rating. I think he was likely correctly identified as having a cautious, or conservative, attitude to risk. I'd question the general principle of someone with a conservative risk rating being advised to enter a risk based environment – where they assumed the totality of the risk - when they could simply have remained in an environment of guaranteed pension benefits. But even if it could reasonably be argued that it was suitable for a conservative/cautious investor to move from the former to the latter, Mr H's risk rating wouldn't sit comfortably with the investment risk required here to achieve the returns to even just match the scheme benefits.

But I think there's also the wider issue about Mr H's capacity to take financial risks with his pension funds which is pertinent to the overall suitability of what was recommended here. The investigator concluded that Mr H had an overall low capacity for loss, given his paucity of other assets upon which he could rely in retirement. And I'm inclined to agree. Mr H had joined the replacement defined contribution scheme, and so would likely have accrued a reasonable amount of money purchase benefits given the overall contribution rate (if he remained with the same employer).

But other than the state pension which wouldn't be payable until age 67, the defined benefits accrued through the BSPS were likely to have been his main source of guaranteed income. Through transferring, Mr H was effectively putting a lot of his eggs in one "money purchase basket". Any reduction in the benefits payable from them would therefore have had an impact on his financial security in retirement.

But I also don't think Mr H in any case needed to take the associated risks here. In terms of the "control and flexibility" argument, I understand that this would be that Mr H would have control over his pension funds, outside of the BSPS, and could alter the income he withdrew from a flexi-drawdown arrangement to ideally retire early and satisfy changing income needs. But other than concerns around the employer and associated scheme, which I'll address further below, it's unclear as to why Mr H would have wanted or needed such flexibility at the cost of such valuable guaranteed benefits, given the investment risk associated with the transfer, and bearing in mind his attitude to risk and apparent lack of any similar recorded historical investment which might otherwise indicate a preparedness to take risks with his pension income.

Mr H was accruing further benefits in his defined contribution scheme, and given the contribution rates to that scheme (my understanding is that this was 10% and 6% employer and employee contributions respectively) and the number of years left to retirement, compared against the benefits accrued in the final salary scheme, at the normal scheme retirement age, around 15 years of his pension accrual would likely be derived of the defined contribution scheme. As such, Mr H would already by necessity have been taking investment risk through the replacement scheme.

But in light of this, and given that in the 33 years up to that point Mr H had been accruing defined benefits, I think the guarantees attached to those defined benefits would have been of considerable value and shouldn't have been relinquished lightly in favour of a flexibility which was loosely defined around the apparent desire for early retirement and concerns around the employer/scheme.

As with others in his position, I think it's fair to say that Mr H would have been concerned about the future of the BSPS and his associated benefits. But Mr H's concerns around this should have been managed appropriately. I appreciate that there will be instances where a client seeks financial advice with preconceived notions or concerns about the financial health of an employer or pension scheme, but as the professional party, the IFA is tasked with rationally addressing those concerns and providing an appropriately balanced view of the available options.

I don't think this happened here. There was no prospect of the BSPS funds being lost to the employer, even if Mr H distrusted it. Further, the whole point of the BSPS consultation, which had resulted in the agreement being announced in August 2017, had been to avoid the necessity of the BSPS pension funds entering the PPF, and by the point of the advice (and in fact by the time of the "time to choose" exercise) the BSPS 2 seemed more likely than not to be a viable alternative. Conditions still needed to be met for the BSPS 2 to be established, but when the advice was given, there was no imminent prospect of the BSPS entering the PPF without there being an alternative to this – the BSPS 2. In fact, I think it's reasonable to say that all indications by that time were to the contrary.

I also have concerns around the way in which the situation at that time was portrayed to Mr H. For example, as noted by the investigator, Inspirational informed Mr H in the suitability report that he wouldn't be able to retire early if his benefits needed to be transferred into the PPF. But this wasn't the case – the PPF did allow early retirement.

As I've said above, I think the prospect of Mr H's accrued benefits needing to enter the PPF had receded. But even if this remained the more likely outcome, this would still have provided Mr H with valuable benefit guarantees, and possibly a more favourable early retirement reduction if he did in fact take scheme benefits earlier than age 65.

And so I think that, had Mr H's concerns been better managed, and accurate information provided, a key driver for having control over his pension benefits would also have diminished.

And on the specific matter of early retirement, I agree with the investigator that financial advice should be more than simple "wish fulfilment". And if such a plan isn't credible, then the client should be advised of this. In this case, the suitability report recorded that Mr H had said that he would ideally like to retire at age 55 *if* his finances allowed it. But given his overall circumstances and lack of other available assets, along with what the investigator noted as an incomplete assessment of Mr and Mrs H's likely income needs in retirement, I think it's doubtful that Mr H's financial situation, and his attitude to risk, would have meant that he could retire early comfortably.

And so on the basis of what I've said above, it follows that I don't think the possibility of early retirement, or any other requirement around control over, and flexibility of, income, was sufficient reason for Mr H to transfer his deferred benefits.

Death benefits

The restructuring of the death benefits doesn't appear to have been a key motivator in the transfer. And Mr H commented in the fact find that maximising his own pension benefits was the priority rather than leaving a spouse's/dependant's pension. But I would in any case comment that, if a lump sum death benefit was important to Mr H, the brief comparison provided within the suitability report omitted the death in service benefits which Mr H's dependants would receive from his employer.

Further, accrued pension provision is intended to provide for an individual's retirement rather than a desire to leave a legacy for extended family members. The recommendation needed to be given in the context of Mr H's best interests, and Mr H himself identified this.

What should Inspirational have done – and would it have made a difference to Mr H's decision?

There were understandably concerns relating to the BSPS at the time of the advice - and I fully acknowledge this. It's fair to say that this was a period of great uncertainty for individuals such as Mr H. But this only serves to emphasise the need for a balanced assessment of the options available and, ultimately, suitable advice.

There was no imminent prospect of Mr H's scheme benefits needing to enter the PPF. On the contrary, whist I acknowledge it wasn't at that point guaranteed, I think the indications were that the BSPS 2 would more likely than not be successfully implemented.

I've also thought very carefully about whether the service provided to Mr H was a balanced appraisal of the options available to him, coupled with a robust and candid discussion about his own concerns relating to the BSPS. Mr H, amongst many others in a similar position, may have been concerned by developments relating to his employment and the BSPS, which clearly fed into his views on having control over his own pension funds, but he was nevertheless entitled to an impartial review of his options.

And looking at those options, one of the key recorded objectives - possible early retirement – was in any case achievable within the BSPS 2, and would have remained so even in the scenario of entry into the PPF – contrary to the statement in the suitability report.

For the reasons given above, I don't think the perceived advantage of flexibility and control of income outweighed the guaranteed benefits in the scheme. The available evidence simply doesn't support the position as to why control or flexibility would have been sufficiently compelling reasons for Mr H to relinquish valuable benefit guarantees which he'd accrued over some 33 years within the scheme.

My further view is that, if properly discussed, Mr H's concerns about the existing scheme could have been successfully allayed, such that he appreciated the important guaranteed benefits, even under the PPF, which he would be relinquishing for the sake of income flexibility which he simply didn't need, and a future pension which would, other than the state pension from age 67, be entirely dependent upon investment returns – rather than being partially dependent upon them as would otherwise have been the case through the defined contribution scheme.

Tax free cash for whatever purpose would have been available both from his accrued defined contribution and defined benefit pension funds. Death benefits were also payable from the defined benefit scheme, albeit in a different format from those available from the PPP.

The critical yield is usually a telling indicator of the value of the benefits being relinquished. As I've set out above, the critical yields were higher than the discount rate and the mid band growth rate in the PPP projection. And I'd reiterate that I think it was unlikely to be achievable, year on year, to even simply match the scheme benefits, given Mr H's conservative risk attitude.

Taking account of Mr H's circumstances, including his recorded attitude to risk, his objectives and the guarantees which the BSPS offered and would have persisted with either the BSPS 2 or the PPF, my view is that Inspirational should have advised against the transfer.

And I think that, had this happened, Mr H would have followed that advice and not transferred his benefits to the PPP.

Summary

For the reasons given, my view is that a fair and reasonable assessment of this case leads to a clear conclusion – that the recommendation to transfer wasn't suitable for Mr H, nor was it in his best interests. The key contributing factors here are: Mr H's conservative attitude to risk and its incompatibility with the type of investment risk which would have been required to match the scheme benefits – a failing under COBS 19.1.7; and the lack of a comprehensive and balanced portrayal of Mr H's options (for example early retirement through the PPF and the omission of death in service benefits) – a failure to adhere to COBS 19.1.2 (2) and 19.1.8.

Furthermore, at least one of the key benefits sought by Mr H was available without needing to transfer – possible early retirement, although I'd refer to my comments, aligned as they are to the investigator's, about the actual viability of this. I also note that Mr H hasn't retired yet.

My view is that, taking account of the critical yields, Mr H's conservative attitude to risk with regard to his pension funds and matching that with the likely corresponding investment returns, it was unlikely, albeit I acknowledge, not impossible, that the benefits available from the BSPS, or a successor scheme, could be bettered through the transfer.

As the other reasons for transferring were insufficiently compelling, when considered against the valuable benefits being relinquished, as set out in COBS 2.1.1R and COBS 19.1.6, Inspirational would - or should - then have drawn, and conveyed, the conclusion that transferring wasn't in Mr H's best interests.

Putting things right

As set out in the investigator's comments relating to the BSPS-specific redress calculator, I consider that it would be appropriate to use that calculator here rather than FG17/9, given the BSPS-specific circumstances.

A fair and reasonable outcome would be for the business to put Mr H, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr H would most likely have remained in the occupational pension scheme and opted to join the BSPS 2 if suitable advice had been given. I acknowledge that the PPF may have provided enhanced early retirement benefits, but had Mr H been suitable advised, I don't think he would have opted to take early retirement, certainly at 55.

Had Mr H been made aware of the likely incompatibility of the growth expectations of his pension fund with his conservative attitude to risk, and more importantly had been suitably advised against transferring on that basis, I don't think he would have transferred. And had Mr H remained in the BSPS, I don't think he would have retired early on the basis of the reductions which would have applied in either the BSPS 2 or the PPF. As set out above, I note that Mr H still hasn't retired.

Inspirational Financial Management Ltd 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.

Inspirational Financial Management Ltd 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 H and our service upon completion of the calculation.

Mr H has not yet retired, and my understanding is that he has no plans to do so at present. So, compensation should be based on the scheme's normal retirement age, as per the usual assumptions in the FCA's guidance.

This 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 H'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, Inspirational Financial Management Ltd should:

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

- explain to Mr H 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 their redress prudently is to use it to augment their defined contribution pension

- offer to calculate how much of any redress Mr H receives could be augmented rather than receiving it all as a cash lump sum,

- if Mr H accepts Inspirational Financial Management Ltd's offer to calculate how much of its redress could be augmented, request the necessary information and not charge Mr H for the calculation, even if he ultimately decides not to have any of its redress augmented,

and

- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr H's end of year tax position.

Redress paid to Mr H as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, businesses 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 have been taken as tax-free cash and 75% would have been taxed according to Mr H'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.

Where I uphold a complaint, I can award fair compensation of up to £170,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £170,000, I may recommend that the business pays the balance.

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

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

If Mr H accepts this final decision, the award will be binding on Inspirational Financial Management Ltd.

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

My final decision

My final decision is that I uphold the complaint and direct Inspirational Financial Management Ltd to undertake the above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 9 November 2023.

Philip Miller
Ombudsman