DRN-4366200

The complaint

Mr B complains about the advice given by The Informed Partnership Limited trading as Informed Financial Planning ('IFP') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

Our Investigator thought the complaint should be upheld. IFP disagreed with the Investigator's opinion. The complaint was then passed to me.

I issued my provisional decision saying that Mr B's complaint should not be upheld. A copy of the background to the complaint and my provisional findings are below in italics and form part of this final decision.

What I said in my provisional decision

In 2015 Mr B's employer, Tata Steel, was experiencing some problems. Mr B was also concerned about the DB scheme the British Steel pension scheme ('BSPS').

Mr B has said that, because of the problems with his employer, and the scheme, he had decided to seek work elsewhere. In the middle of 2015 Mr B attended some seminars about the DB scheme given by his employer. He says these prompted him to look further into the DB scheme and his pension planning in general.

Mr B approached IFP in July 2015 to discuss his pension and retirement needs. He was referred to IFP by another adviser who couldn't advise on pension transfers. He was still concerned about the situation with his employer and the BSPS.

IFP completed a fact-find to gather information about Mr B's circumstances and objectives. This showed that:

- *Mr B was 58, divorced and in good health. Whilst he had children, they were not dependent.*
- *He worked full time for Tata Steel.*
- *Mr B did have some debt. This was an interest only mortgage of around £60,500, a repayment mortgage of £36,500 and personal loans and credit cards of £25,000.*
- *Mr B was paying a total of £1,050 each month to this credit.*

Mr B had received a Cash Equivalent Transfer Value ('CETV') from the BSPS which was guaranteed to 8 December 2015. This showed that Mr B had built up around 40 years' service in the BSPS and the transfer value of this was £346,673.80.

IFP carried out an assessment of Mr B's attitude to risk, which it said was 'balanced'. This was described as Mr B being prepared to take some investment risk in order to increase the chances of achieving a reasonable return, but that capital protection was still important. However, Mr B's capacity to take risk was noted as being 'very low'. IFP said that Mr B could accept a growth rate of 7% with this attitude to risk.

Mr B left the DB scheme with effect from 1 September 2015. IFP didn't advise Mr B to do this.

IFP prepared a financial Planning Report in October 2015. IFP and Mr B discussed this report in person. This showed that his objectives were:

- *To repay his mortgage and other personal debt. This would save him a significant amount of interest.*
- *To be able to retire relatively quickly, he did not wish to continue working with his current employer.*
- *He wanted to use his pension fund flexibly, and to spend more at the early part of his retirement and less later on. He wanted to use it as it suited him even if this meant relying on only the state provision in retirement.*
- *He wanted his children, and grandchildren, to benefit from his pension fund.*

But IFP said that losing the guaranteed benefits the DB scheme had was unlikely to be beneficial to Mr B and so there wasn't sufficient reason to recommend that he transfer. The report said that the yield required to match the benefits was unlikely to be achievable on a consistent basis.

It went on to say that Mr B should look at refinancing his debts now and start to repay the interest-only mortgage when possible. He should take benefits from the scheme when the income from it would meet all of his retirement needs, which it would in the not-too-distant future. IFP provided some calculations to support this.

Mr B and IFP discussed the report. IFP's notes to the discussions say Mr B's options and his cash flow situation in retirement were looked at in some detail. This included some calculations that Mr B had already prepared about this. IFP's notes to this meeting conclude that, ultimately, given the uncertainty about his overall situation and the DB scheme then it wouldn't be right to advise him to leave his DB scheme.

Following this meeting I understand Mr B applied for voluntary redundancy and it looked likely that he would soon leave Tata Steel.

And on the 5th November 2015, Mr B emailed IFP and informed it about this. He said that:

'As soon as I hear anything I'll let you [IFP] know as I want to get the pension out of the scheme as soon as possible to get debts paid off and money invested and working for so that Im not working for nothing effectively (ie all my wages spoken for) as I am now. The recommendation to work until in 65 is not realistic to be honest anyway as this entire site will be shut in the next two years . Or sooner- the sooner my pension is out the happier I will be.'.

Following this, on 19 November 2015, IFP produced a second suitability report. I understand that Mr B met with IFP again and discussed the report. This contained essentially the same information the earlier one had about Mr B's circumstances. But there was more detail about how a transfer to a personal pension, and taking an income from the transferred funds, would affect Mr B.

This second suitability report reiterated that Mr B should not transfer his DB scheme benefits and should, ideally, look at working a few more years and taking the benefits from the DB scheme when it could provide enough income to meet his needs and repay all his outstanding debts.

The suitability letter went on to say, in bold, that 'IFP do not recommend you transfer/access your retirement benefits now we have agreed to suggest a provider which will allow you to access your provision; however please note that this advice is been carried out under an "insistent client" basis.'

The letter said that Mr B had decided to disregard this advice because he wanted to repay his debts straight away and he wanted to retire as soon as possible. He wanted to provide his fund to his non-financially dependent children.

IFP then provided its recommendation about which third party personal pension provider Mr B could transfer to and advised him on how to invest the proceeds in funds that met his attitude to risk.

And Mr B also signed an insistent customer form on 20 November 2015 which said that he wanted to transfer for the following reasons:

- *The work environment was harsh and he thought a drawdown arrangement was the best way to retire early. He couldn't do this in the BSPS without 'penalties'.*
- *He was single and so didn't need the death benefits the DB scheme offered.*
- *He wanted to clear some debts.*
- *He would not need a lot of money in retirement.*
- *He could leave an inheritance for his children.*
- *He thought the scheme was failing and it had introduced penalties for early retirement in 2015. He thought the scheme would ultimately move to the PPF.*
- *Tata Steel was also in severe financial difficulty.*
- *He thought the transfer value was good but it would fall if he delayed.*

Mr B then transferred his DB scheme value to a personal pension.

Mr B complained in 2021 to IFP about the suitability of the transfer advice. He said he was concerned about the closure of the scheme and sought advice. He says he was told the transfer was 'borderline' but that he could transfer as an 'insistent customer'. He thinks this wasn't the best advice and he has suffered a loss because of this. He says he should have been advised to join the BSPS2.

IFP didn't uphold Mr B's complaint. It said that:

- *Mr B understood fully what he was giving up including the guaranteed income. Mr B had done his own calculations about his projected income from the transfer and so he would've understood this.*
- *It pointed out the disadvantages of the transfer and recommended that Mr B not proceed.*
- *Mr B was clear that he wanted to transfer out and why this was.*

Mr B referred his complaint to our service. An Investigator upheld the complaint and recommended that IFP pay compensation. He said it was clear that the DB transfer was not in Mr B's best interests as there was no prospect of the personal pension giving Mr B benefits of the same value as those he gave up from the DB scheme. He wasn't persuaded that Mr B necessarily understood this. He didn't think that the suitability reports left Mr B in an informed position.

IFP disagreed, saying that Mr B wasn't a complete novice and he made the decision himself after contact with the DB scheme. He was aware of the benefits he was giving up and chose to transfer despite this.

The Investigator wasn't persuaded to change their opinion, so the complaint was referred to me to make a final decision.

What I've provisionally decided – and why

I've considered all the available evidence and arguments to provisionally decide what's fair and reasonable in the circumstances of this complaint.

When I've looked at the recommendation 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. This includes the Principles for Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS'). 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.

The applicable rules, regulations and requirements

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 IFP'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).

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability. And the provisions in COBS 19 which specifically relate to a DB pension transfer.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, IFP should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr B's best interests.

I'll briefly look at whether the advice IFP gave to Mr B at the time of sale was suitable for him. I won't do this in detail, as IFP did say that the transfer wasn't in Mr B's best interests.

IFP said that Mr B shouldn't transfer, broadly, because the critical yields, that is the amount that the transferred-out funds would need to grow by to replicate the scheme benefits, were very high. They were calculated to be around 15% each year. IFP said that a growth rate this high was unachievable. So, transferring to a personal pension would lead to Mr B receiving significantly lower pension benefits.

The suitability letter said that Mr B wanted an income of £16,000 a year after his debts were repaid. At age 65 Mr B could receive an income of £27,247 or tax-free cash of £126,013 and a reduced pension of £18,902 from the DB scheme. So, the DB scheme would provide more than enough income and tax-free cash at this age.

Mr B did want to retire early and use some of his pension fund to repay some of his debts. It was clear both of these were very important to him. He was finding work very hard and he was spending a significant amount each month to repay his mortgages and other credit. Even if he didn't retire early, there is no disagreement that he wanted to make some changes.

IFP did look into this. It said that if Mr B were to retire immediately, he would receive an income of £14,954 or tax-free cash of £69,160 plus a pension of £10,374 from the DB scheme. So, taking the benefits immediately from the DB scheme wouldn't give him enough to meet all his aims.

But, as IFP said, Mr B was repaying his borrowing without problems and, given the 'cost' of the benefits he would give up, making a DB transfer was a very expensive way to repay his credit. It didn't think that repaying this debt was a good reason to transfer his DB scheme benefits. It also said he should instead try to refinance his debt to make it more affordable.

One of Mr B's aims was to provide his pension fund to his wider family on the event of his death. It wouldn't have been possible for him to do this in the DB scheme. But the priority here was to advise Mr B about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement which is what IFP concentrated on.

IFP essentially said that Mr B should wait as long as possible to take his DB scheme benefits. This would enable him to use the tax-free cash to repay his remaining debt and the income would meet his needs if he was closer to the scheme's normal retirement date. I think this advice was suitable overall.

So, having considered all of this, I agree with IFP that it wasn't in Mr B's best interests financially to transfer his DB scheme to a personal pension. And that IFP was right to advise Mr B not to do this. It was clear that Mr B did have some pressing aims, but I think it was right that IFP said he should try and meet these in other ways. And look to fully retire later on.

Was it fair for IFB to classify Mr B as an insistent customer?

At the time of the advice there was no regulatory advice or guidance in place in respect of insistent clients. But COBS required IFP to 'act honestly, fairly and professionally in accordance with the best *interests of its client'. In addition, COBS required IFP to provide information that was clear, fair and not misleading. So, IFP's recommendation had to be clear and Mr B had to have understood the consequences of going against the recommendation.*

I can see that our Investigator talked about the rules and guidance that came into force not long after this advice was given. And I appreciate these aren't entirely relevant here. Although, as I understand it, the later guidance was informed in part by existing best practices and so on, rather than it being entirely new expectations.

For example, it was good practice at the time for IFP to have asked Mr B to explain why he wanted to proceed with the DB transfer in his own words. And according to the meeting note of 20 November 2015, Mr B had prepared a document in his own words setting out the reasons why he still wanted to transfer his pension. I've reviewed this and note it is very detailed and gives several reasons why Mr B wanted to transfer his pension.

Although this letter didn't state that Mr B understood if he transferred out he'd be doing so against IFP's advice, he clearly explained the many reasons why he wanted to transfer and why he felt it was the right thing to do. And I think at this point Mr B understood that he was proceeding against the advice, given he'd had a full suitability report in which the recommendation to remain in the scheme was set out and explained. Mr B also had a further conversation with IFP following this, and an additional suitability report again reiterating the advice to remain in the scheme. The report also stated that Mr B had confirmed in the last meeting that he had decided to disregard the recommendation and so it was processing the transaction on an insistent client basis. So, I think Mr B understood what he was doing and made an informed decision to proceed.

I do think there were some shortcomings in the process IFP employed. For example, in his letter, Mr B talked about the penalties he'd face by retiring early under the DB scheme – IFP ought to have explained that they were not penalties, rather just actuarial reductions that applied because the pension would have to be paid over a longer period of time. And it ought to have emphasised that Mr B would still be better off by retiring early, despite the lower income payable to him. It also ought to have provided further reassurance about the PPF in response to the concerns Mr B wrote about in his letter about the pension scheme failing – the pension transfer analysis showed Mr B still wasn't likely to be able to match the benefits he could get from the PPF if he transferred out. That ought to have been explained.

However, even if IFP had gone further to try and dissuade Mr B from transferring, I think Mr B would still have gone ahead with the transfer of his DB scheme into the personal pension and made the subsequent investments. I'll explain why.

Mr B has said that his first discussions about transferring his DB scheme were with the scheme itself, in one of the seminars that it ran. He said he was left with a favourable impression of the transfer. I understand that Mr B also discussed his situation with some other advisors before contacting IFP. So, Mr B wasn't acting just on the information and advice that IFP gave him. He was actively looking to make changes here.

And it was Mr B who contacted IFP with a view to transferring his DB scheme and potentially retiring early. At this point his situation was changing and his plans to leave Tata Steel had advanced. And Mr B explained that he was considering not working going forward and he wanted the option to do this. He seemed very concerned about the impact the physical nature of the work was having on his health. And he was worried about the level of debt that he had and the payments he needed to make each month to service this. In particular, he had no means to repay his interest only mortgage. Mr B didn't have a spouse who would benefit from his DB scheme and wanted to access his pension while he was of an age to enjoy it. All these things seem to have added to Mr B's desire to transfer his DB scheme away.

I also think that Mr B had a very negative view of his employer – he (not unreasonably) believed his job was at risk given the redundancies that had been made. And he felt that taking action now and leaving his employment was the right thing to do here. It's clear he had concerns about the future of the pension scheme, which remained even though IFP explained the protection offered to him by the

Pension Protection Fund ('PPF'). Mr B still felt that removing the pension from his employer's control was in his best interests.

And whilst it seems that Mr B could have taken a partial transfer from the DB scheme. And this wasn't mentioned in the information at the time. I don't think this would have met Mr B's want to transfer his funds away from the BSPS.

The notes that IFP have made also show that Mr B made his own analysis of the cashflow the DB scheme could provide after he had repaid his debt. And the information IFP provided about the pension plans, the returns from each of his options, helped him make an analysis of the situation if he transferred out and decide what was the best course of action for him.

And I think this analysis that Mr B undertook himself, using his own information and what IFP had provided, goes to demonstrate that he understood, as far as he could, the course of action and the risks he was taking. I think he understood the overriding risk that if he transferred the DB scheme, repaid his debts, and drew significant amounts from the remaining fund, he may exhaust this fund and only have the state pension to rely on in retirement. Again, the point-of-sale documentation shows that Mr B was aware of this but that it wasn't a great concern to him as he didn't expect to have expensive needs in retirement.

It seems to me that Mr B had clearly thought about the benefits of transferring. The fact find notes show that in the second meeting to discuss the advice Mr B thought that repaying his debt would vastly improve his financial wellbeing. And in the notes and emails that exist Mr B confirmed that he didn't think that he had another means to finance the changes to his life that he felt he needed to make. I'm satisfied from the evidence that I have that this was the case. I think Mr B was clearly driven to transferring his pension to access the tax-free cash. And he did have what he thought were good reasons for doing this.

Taking all of this into consideration I think it's evident that Mr B was set on this course of action. He had several strong personal reasons for wanting to transfer out of the BSPS, and even if IFP had done more to try and explain why it wasn't in his best interests, I think he would've gone ahead anyway.

IFP initially recommended that Mr B shouldn't do this. It explained the benefits he could receive now and in the future from the DB scheme. And it explained that the DB transfer would also likely not meet his retirement aims. It went on to explain that Mr B should consider working for a few more years and using his surplus income to reduce his indebtedness. It provided examples of how he could do this. He would then be very likely to meet his needs at retirement and repay his debts.

I think the advice and explanations that IFP provided were reasonable. It demonstrated that it had considered Mr B's situation and provided what I think were viable alternatives to what he wanted to do. And whilst the suitability reports were lengthy, I think they were understandable. And it was clearly presented to Mr B that the DB transfer was not in his best interests.

IFP didn't invite Mr B back after the first suitability letter or go on to suggest that he make the transfer in any event in this document. It only said that it would arrange the transfer on an insistent customer basis after Mr B had got back in touch with it to say he wanted to go ahead despite its advice.

So, it was suitable advice for Mr B not to transfer; IFP explained why this was and gave what I think were reasonable alternatives. But Mr B, for his own strongly felt reasons disregarded this advice.

Overall, even though I think IFP's process could have been more robust, I don't think that would have changed the outcome in Mr B's particular case. I think Mr B would have pursued the transfer and insisted on IFP transferring his pension in any event.

Developments

IFP, and Mr B, confirmed that they had received my provisional decision. IFP didn't have anything to add after they'd seen it.

Mr B, via his representative, didn't agree with my provisional decision. His representative said that, in summary:

- Allowing Mr B to opt out of the BSPS without advice was a significant failure, it should have advised him not to do this.
- IFP didn't properly address Mr B's reasons for wanting to transfer and it didn't put right any misconceptions he had.
- IFP failed to assess Mr B's alternative options. It only really listed these as possibilities.
- If Mr B was given better information about the alternative options, such as looking for lower mortgage rates, or taking alternative employment, he wouldn't have transferred.
- IFP should have reassured Mr B about the safety of his pension scheme in the BSPS. And it should have looked at cashflows in more detail.
- Mr B didn't need to transfer, he wasn't in financial difficulty and he didn't need to repay his debts. He could have accessed the scheme benefits and met his needs. He didn't want the state pension to be his only source of income.

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.

As a starting point I've reached the same conclusions I reached before, for the same reasons. But I'll comment on what Mr B's representative has said.

I firstly don't think it's reasonable to say that IFP should be responsible for Mr B's decision to leave the BSPS. Whilst there had been some contact before he did this, there isn't anything to show that IFP had any input into this decision. Mr B seems to have made it himself, after contact with the DB scheme, and in response to the wider events that were happening in his workplace and with the DB scheme. I don't think it would be fair to say that IFP should have advised him to stay in the DB scheme.

Mr B says that it wasn't clear to him that he had other options, and if he had been given better information about what else he could have done, he may hot have transferred. He and his representative have outlined some of the options he may have had available to him.

But I don't think this properly takes into account Mr B's situation and the advice process. As I said in my earlier decision, IFP advised Mr B not to transfer his DB scheme. It essentially said that he should wait to take the benefits from it, and this would better meet his needs for tax-free cash and a retirement income. I can accept that there could have been more detail about some of the advice given. But I think it was clear why IFP advised Mr B not to transfer. And I think the reasons why it did this were sound.

Mr B now says that cashflows weren't looked at, but the point-of-sale information shows that they likely were. In particular, the file notes to the meetings Mr B and IFP had make reference to this being discussed and to Mr B making his own cashflow calculations. I'm persuaded that this was an important part of the process.

Mr B now says that he 'wasn't desperate' to leave his employer or the scheme and if he'd been given better options, he may not have left the scheme. And that it would have been relatively straightforward for him to stay with his employer and refinance his borrowing to make it more affordable.

But there are numerous references to Mr B being unhappy with his employer and he had applied for voluntary redundancy. He clearly did want to leave, if at all possible. And he did leave the DB scheme before being given advice by IFP.

Mr B's representative has said that mortgage rates were very low and changing his credit arrangements would be straightforward. But Mr B was 58 and had a significant amount of debt, a large part of his mortgage was on an interest only basis. He was actively trying to leave an employer that was experiencing difficulty. I don't think this situation was straightforward and I don't think it would have been reasonable to give Mr B advice on the basis that he would have found it easy to secure alternative employment or the 'lowest ever' mortgage rates. I don't think IFP exaggerated this when it advised Mr B not to transfer.

And the insistent client process could, of course, have been improved. And I don't disagree that things such as better information about the pension protection fund would have been useful.

But, again, the context around this is important. IFP's advice was that Mr B shouldn't transfer. It was only when Mr B contacted it again to say that he didn't agree that IFP started to look at where Mr B could transfer to. I think, overall, it's clear that Mr B did understand that there were disadvantages to transferring, but he wanted to proceed in any event. So, I still don't think a more robust insistent customer process would have changed this.

Given all of the above, I'm still not persuaded that Mr B's complaint should succeed.

My final decision

For the reasons set out above, I don't uphold Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 25 October 2023.

Andy Burlinson
Ombudsman