DRN-4284656

The complaint

Mr T complains about the suitability of the advice provided by Inspirational Financial Management Ltd ("IFM") in 2017 to transfer the value of his safeguarded benefits in the British Steel Pension Scheme ("BSPS") to a personal pension plan ("PPP") provided by Prudential.

Mr T is represented in this complaint by a claims management company ("CMC").

On 17 November 2022, IFM wrote to the CMC to acknowledge receipt of this complaint. So it's aware of the matter. However, despite several chasers, it failed to provide a final response either accepting or rejecting this complaint. And, after referral to this service, it then failed to provide copies of contemporaneous documents to enable us to investigate the matter. Therefore, this final decision is based solely on Mr T's recollection and information provided by Prudential and the BSPS.

What happened

Mr T 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 T had built up about 32 years' pensionable service in the BSPS during two separate periods of service between 1985 and 2017.

In May 2017, the PPF announced that the terms of a Regulated Apportionment Arrangement ("RAA") 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 total transfer value of £372,107.57 in respect of both periods of Mr T's pensionable service)

In September 2017, terms of the re-structure were confirmed enabling trustees of the BSPS to start to talk to members in detail. This led to the *'Time to Choose'* communication pack being issued to members, including Mr T, in October 2017. The pack provided more detail about the three options available and was intended to help members choose an option.

Mr T contacted IFM for advice on his options. He told us his circumstances at that time were as follows:

- He and his wife were both aged 50 and in good health. They didn't have any children or anyone financially dependent on them;
- He was employed full-time by Tata Steel and paid gross annual income of about £29,000. He didn't expect his employment status to change in the foreseeable future. His wife was employed and was paid gross annual income of about £12,000;
- Their assets comprised the marital home valued at about £100,000. They didn't have any other savings or investments;
- Their liabilities comprised an outstanding mortgage of about £45,000 on the marital home, the monthly cost of which was £400. They had some unsecured debt including a credit card with an outstanding balance of about £1,000 and a personal loan;
- After paying for bills and essentials, they had surplus disposable income of at least £1,000 available every month;
- His wife didn't have any private pension arrangements;
- He was an inexperienced and cautious investor; and
- He had an aspiration to retire from age 60

IFM advised Mr T to accept the aggregated transfer values offered by the BSPS and to transfer into a new PPP provided by Prudential. The Prudential has provided evidence to this service that confirms the following:

- On 6 November 2017, it received two separate transfer values from the BSPS totaling £372,107.57;
- The PPP was invested 70% in the *'PruFund Growth'* fund and 30% in the *'PruFund Cautious'* fund;
- The annual product and investment charges amount to 1.00% of the PPP fund value;
- Mr T nominated his wife to receive 100% of any death benefit;
- IFM was the advising firm that set up the PPP and facilitated the pension transfer from the BSPS. It was paid an initial advice fee of £5,000. In addition, it was to be paid an ongoing advice charge of 0.4%. The advice charges were deducted from the PPP fund value; and
- A statement dated 3 November 2017 on IFM headed paper that it advised Mr T to transfer away from the BSPS to convert his safeguarded benefits into flexible benefits (the Part 4A statement)

Following the pension transfer, Mr T transferred the value of his PPP to a different provider.

<u>This complaint</u>

During 2022, the CMC, on behalf of Mr T, complained to IFM about the suitability of its pension transfer advice. In its view, the pension transfer advice was unsuitable and had caused him to suffer a financial loss.

IFM acknowledged receipt of this complaint but then failed to provide a final response letter either accepting or rejecting it. So the CMC referred the matter to this service.

In July 2023, one of our investigators considered this complaint and recommended that it be upheld. This was because he hadn't seen any evidence that transferring to the PPP was clearly in Mr T's best interests compared to the alternative options. He thought suitable advice would've been to transfer to the BSPS2. To put things right, our investigator recommended that IFM carry out a redress calculation in line with the FCA's guidelines on the basis that Mr T transferred to the BSPS2, retired at age 65 and would be a 20% income taxpayer in retirement. In addition, he recommended that IFM pay Mr T £300 compensation for the trouble and upset caused by its unsuitable recommendation.

The CMC, on behalf of Mr T, 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

The evidence I've seen clearly shows that IFM advised Mr T to transfer the value of his safeguarded benefits in the BSPS to a PPP provided by Prudential. There's no dispute about this. IFM is therefore responsible for the suitability of the pension transfer advice about which Mr T has complained.

As noted above, IFM acknowledged receipt of this complaint but then failed to provide a final response letter or provide to this service copies of any available contemporaneous documents. 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 evidence, I'm satisfied that I have sufficient information to be able to decide this complaint in line with DISP 3.5.9R and 3.5.14R.

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 T were set out in COBS 9.2. The relevant rules were COBS 9.2.1R and 9.2.2R. In addition, COBS 9.5.2R required IFM to retain its records relating to suitability indefinitely if it related to a pension transfer, as it did in Mr T's case. A key record relating to suitability is the suitability report which is intended to set out the reasons for the recommendation.

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 T, it's necessary for me to have due regard to the FCA's rules and guidance stated above.

<u>Mr T's situation when IFM advised him</u>

The situation for Mr T 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 in its *'Time to Choose'* communication pack.

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 T. 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 BSPS2 provided the potential for discretionary increases to the scheme pension, a higher level of spouse's pension and the option to transfer to a PPP at a later date, if then deemed suitable. The benefits available under 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. Given the FCA's view on safeguarded benefits and what was known at that time, it's my fair and reasonable opinion that IFM should've considered that the BSPS2 was likely to be the better option for Mr T based on his personal circumstances and the uncertainty about when he would be able to retire. And so it's my view that IFM should've only recommended a transfer to the PPP in favour of the BSPS2 if it could clearly demonstrate why it was in Mr T's best interests, as referenced in COBS 19.1.6G.

Having considered the evidence available, I agree with the investigator's view that IFM's pension transfer advice to Mr T was unsuitable for largely the same reasons. My view can be summarised as follows:

- Mr T's wife didn't have any private pension arrangements. So I think it's fair to say that both of them would be heavily reliant on the value of Mr T's safeguarded benefits in the BSPS to provide a secure source of retirement income before they started drawing their state pensions;

- The primary purpose of a pension is to meet the income needs of an individual during retirement. Mr T's safeguarded benefits, accounting for about 32 years' pensionable service between 1985 and 2017, represented his most valuable asset. 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 T 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 T had a very limited capacity for loss. So I think it was important not to expose the value of his safeguarded benefits to unnecessary risk by treating generic objectives such as 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;

- There's no evidence that IFM provided a suitability report to Mr T. So it's unclear to me why IFM recommended a transfer to a PPP in favour of the PPF and BSPS2 options. IFM's inability to locate and provide to this service copies of relevant suitability-related documents is concerning since it had a regulatory obligation under COBS 9.5.2R to retain records relating to pension transfer advice indefinitely;

- Mr T doesn't recall the detail of the discussions he had with IFM's adviser including the reasons why the adviser recommended a transfer to a PPP in favour of the alternative options. But he does recall that he had an aspiration to retire from age 60 – so I think it's likely this was the primary motivating factor for the pension transfer. Mr T was then aged 50 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;

- Clearly, given Mr T's age, the basis of the advice wasn't to enable him to retire immediately but instead at some indeterminate point in the future. The further away from retirement an individual is, the harder it is to establish a realistic income figure and whether early retirement would in fact be possible. I think it would've been difficult to calculate an accurate income figure with the time frame to age 60. There's no evidence that IFM recorded Mr T's target retirement income need when it advised him. Without understanding his retirement income need, I cannot see how IFM was able to clearly demonstrate that transferring to a PPP at that time was in Mr T's best interests;

- There's no evidence IFM obtained the necessary information relating to Mr T's financial situation including his anticipated income and expenditure during retirement when assessing whether it was suitable for him to transfer to a PPP. It may well have been the case that Mr T's retirement income need could've been met by the BSPS2 but there's no evidence IFM established this. Ultimately, however, there's insufficient evidence to demonstrate why it was in Mr T's best interests to transfer at that time to achieve his early retirement objective or whether he could in fact retire earlier than age 65;

- Mr T described himself as an inexperienced and cautious investor. He didn't have any savings or investments at the time of IFM's advice that would indicate he had experience of investing. I haven't seen any evidence that persuades me Mr T understood the investment, inflation and longevity risks associated with his safeguarded benefits being transferred from the scheme to a PPP. Those risks would've been retained by the BSPS2 had he transferred to that scheme – I cannot see that there was any compelling reason for Mr T to take on those risks at that time;

- Had IFM advised Mr T to transfer to the BSPS2 he would've maintained safeguarded benefits and retained the option to transfer to a PPP at a later date, if then deemed suitable, when he could immediately access benefits and, crucially, determine his retirement income and lump sum needs with far greater accuracy than at age 50;

- Mr T had received guaranteed income all his working life. So I think a guaranteed retirement income from another source such as the BSPS2 before state pension age would've been valuable for an individual in his circumstances;

- The pension transfer led to Mr T having access to flexible benefits. Flexibility and control might sound attractive, but I can't see that Mr T 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 several years in the future. There's no real evidence that Mr T 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 the tax-free cash under the BSPS2;

- In addition, Mr T and his wife had surplus disposable income of at least £1,000 available every month. There's no 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;

- Mr T didn't have any health issues at the time IFM advised him which might reasonably have prompted him to relinquish the guarantees attached to his own retirement income for the sake of an enhanced safety net for 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; and

- There's no evidence that IFM obtained a Transfer Value Analysis ("TVAS") report based on Mr T's specific circumstances in line with COBS 19.1.2R. So it's unclear whether there was a reasonable prospect that Mr T would be better off transferring to a PPP. Without evidence of a TVAS report it's difficult to conclude that a pension transfer was clearly in Mr T's best interests.

Conclusion

Overall, I don't think the evidence available supports the position that the pension transfer was clearly demonstrated to be in Mr T's best interests and therefore suitable. I haven't seen that there were any 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 T 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 T gaining any clearly defined advantage compared to the alternative option of transferring to the BSPS2 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 T, as far as possible, into the position he would now be in but for the unsuitable advice he was given.

Properly advised, I think Mr T would've transferred to the BSPS2 and his benefits would now be preserved in that scheme. I acknowledge that he told us he had an aspiration to retire at age 60. However, he was about 10 years away from that target retirement age when IFM advised him. I think it's fair to say that plans about retirement can change over such a long period of time. I'm not persuaded that there's sufficient contemporaneous evidence that supports the position Mr T would've started taking his safeguarded benefits which involved taking a regular income at age 60. And I'm not convinced it could be reasonably determined at the time that the PPF was the likely better option for Mr T. And so I think, given his age and the lack of clarity surrounding when he would retire, the BSPS2 was likely the better option for him based on what was known at the time and that at age 65 the BSPS2 would provide a higher level of benefits than the PPF. As such, the calculation on the basis of entering the BSPS2 should be carried out. For clarity, compensation should be based on the BSPS2's normal retirement age of 65 for the reasons explained.

IFM must therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement PS22/13 and set out in the regulator's handbook in DISP App 4:
https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter.

IFM should use the FCA's BSPS-specific redress calculator to calculate the redress. A copy of the BSPS calculator output should be sent to the CMC, on behalf of Mr T, 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 T's acceptance of this final decision.

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

- calculate and offer Mr T redress as a cash lump sum payment,
- explain to Mr T 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 T receives could be augmented rather than receiving it all as a cash lump sum;
- if Mr T accepts IFM's offer to calculate how much of his redress could be augmented, request the necessary information and not charge him 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 T's end of year tax position.

Redress paid to Mr T 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 T'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 T £300 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 T 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 T the balance.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 8 January 2024.
Clint Penfold
Ombudsman