DRN-4394919

The complaint

Mr M complains about the advice given by Inspirational Financial Management Ltd ('IFM') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a personal pension arrangement. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

Mr M received advice from another firm about consolidating his defined contribution pensions. In the course of their discussions, Mr M wanted a review of his DB schemes. But, because it didn't have the necessary regulatory permissions to advise on DB pension transfers, it introduced Mr M to IFM. Mr M approached IFM around October 2017 to discuss his pension and retirement needs. This decision is about one of Mr M's DB schemes.

IFM recorded some information about Mr M's circumstances in a fact-find. It noted that he was 51, married with two dependent children. Mr M was employed earning approximately £55,000. His wife was also employed and she earned around £35,000. They had a mortgage on their home, which cost around £800 a month – neither the outstanding balance nor the remaining term was recorded. Mr and Mrs M's combined income exceeded their outgoings giving them around £650 surplus disposable income per month. IFM also carried out an assessment of Mr M's attitude to risk, which it deemed to be 'balanced'.

Mr M's DB scheme benefits had a cash equivalent transfer value ('CETV') of £94,505.

On 5 October 2017, IFM issued a letter summarising its recommendation (a suitability report.) This said Mr M was attracted to the freedoms a personal pension would give him, allowing him to access his pension when he needed it and to shape his income to suit his requirements. It said he was also conscious of the economic climate which had led to high transfer values and he wanted to take advantage of this. It also said Mr M was keen to ensure his pension didn't die with him and he wanted it to be fully inherited by his family.

IFM recommended that Mr M transfer his pension because he required flexibility to tailor the frequency and amount of income he took from his pension; he was prepared to take investment risk to achieve this; and because the transfer value appeared fair value, and the required investment return to match the scheme benefits was achievable. It also recommended a provider and investment strategy that it deemed matched Mr M's attitude to risk.

Mr M complained to IFM in 2023 about the suitability of the transfer advice. In essence, he didn't think the advice to give up a guaranteed pension income was suitable for him.
While IFM acknowledged Mr M's complaint, it didn't provide a response to it.

Mr M then referred his complaint to the Financial Ombudsman Service. He said he's worried that he's been financially disadvantaged as a result of transferring. One of our Investigators looked into the complaint. They thought the advice was unsuitable as Mr M wasn't likely to improve on the benefits he was already guaranteed by transferring. And they didn't think there were any other compelling reasons to justify the transfer as being in Mr M's best interests. They said Mr M didn't have a genuine need for flexibility or control at the time and they didn't think transferring for greater death benefits was suitable - especially when it would likely mean he'd be worse off in retirement as a result. They also said the fact the transfer value might have been high wasn't of itself a suitable reason to transfer. They said Mr M should've been advised to retain his DB scheme benefits – advice they said he would've likely accepted.

IFM didn't reply to the Investigator's findings.

Because it is assumed IFM disagrees, the complaint was referred to me to make a final decision.

What I've decided – and why

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

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. 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 IFM's actions here.

PRIN 6: *A firm must pay due regard to the interests of its customers and treat them fairly.*

PRIN 7: *A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.*

COBS 2.1.1R: *A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).*

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, IFM should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr M's best interests.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for largely the same reasons given by the investigator. My reasons are set out below.

Financial viability

IFM carried out a transfer value analysis report (as required by the regulator) showing how much Mr M's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield).

The advice was given after the regulator gave instructions in Final Guidance FG17/9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published by the Financial Ombudsman Service on our website. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor.

Mr M was 51 at the time of the advice and IFM recorded that he wanted to retire at 65. The critical yield required to match Mr M's benefits at age 62 (the scheme's normal retirement age) was 5.5%. I assume this was on the assumption he took a full pension. No figure was produced based on him taking a lump sum and a reduced pension.

The relevant discount rate closest to when the advice was given which I can refer to was published by the Financial Ombudsman Service for the period before 1 October 2017, and was 3.8% per year for 10 years to retirement. I've kept in mind that the regulator's projection rates had also remained unchanged since 2014: the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

I've taken this into account, along with the composition of assets in the discount rate, Mr M's 'balanced' attitude to risk and also the term to retirement. In my view, there would be little point in Mr M giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme. But here, given the critical yield was 5.5%, I think Mr M was likely to receive benefits of a lower overall value than the DB scheme at retirement, as a result of investing in line with that attitude to risk.

IFM said in its suitability report that the required investment return was achievable over the investment term. But even if it was achievable, which I'm not persuaded it was, this was the return required to simply match Mr M's DB scheme benefits – i.e. just to stand still. To improve on the benefits available to him and to make the transfer worthwhile and financially viable, required consistent returns in excess of this. And in my view, to achieve this, it would've required Mr M to take on a greater level of risk than he indicated he was prepared to take.

For this reason alone, I don't think a transfer out of the DB scheme was in Mr M's best interests. But financial viability isn't the only consideration when giving transfer advice. There might be other considerations, which mean a transfer is suitable, despite providing overall lower benefits. I've considered this below.

Flexibility and income needs

IFM recommended Mr M transfer because he wanted the flexibility *to "control and tailor the frequency and amount of income you receive from your pension fund in retirement to suit your circumstances, needs and tax position, as opposed to the pre-set (albeit guaranteed) income that your existing defined benefits pension would provide."*
But I'm not persuaded that Mr M knew with any degree of certainty whether he required flexibility in retirement. And in any event, I don't think he needed to transfer his DB scheme benefits at this stage to achieve flexibility, *if* that's what he ultimately required.

Mr M was 51 at the time of the advice. And while I accept it's possible he might have given some thought to his retirement, given it was still many years away based on him wanting to retire at 65, I don't think he had anything that could reasonably be described as a set retirement plan. And because of this, I've seen nothing to indicate that Mr M had a strong need to vary his income throughout retirement. Mr M's retirement income needs weren't known. IFM said as much in its suitability report – it said: *"The actual amount you will take from your pension fund when you retire cannot be known at this stage..."* So, I'm not persuaded Mr M could possibly know that he'd need flexibility to vary his income when he didn't know what he needs were.

I also haven't seen anything to indicate that Mr M had a likely future need to take a cash lump sum and defer taking his income. Or a need for a cash lump sum greater than his DB scheme would provide. So, while I accept Mr M might've liked the idea of flexibility – the ability to vary his income and have access to a potentially larger tax-free cash lump sum - it strikes me that 'flexibility' was simply a feature or a consequence of transferring to a personal pension arrangement rather than a genuine objective of Mr M's at the time.

It's my understanding that prior to meeting with IFM, Mr M received advice from another firm about consolidating his existing defined contribution / personal pensions into one plan. The nature of this type of pension means it already provided flexibility in how and when benefits can be accessed. So, in any event it seems Mr M didn't need to transfer his DB scheme benefits at this stage to a personal pension arrangement in order to achieve flexibility in retirement. But if Mr M did in fact have a greater need for flexibility beyond that which he already had, I think this could've been explored closer to his intended retirement age. If Mr M opted into the BSPS2 he would've retained the ability to transfer out nearer to retirement, if his needs later demanded it. I think IFM could've explained this more clearly to him.

As I've already said, Mr M didn't know what his retirement income needs were. And IFM doesn't appear to have attempted to ascertain it by carrying out a detailed income and expenditure in retirement analysis. Without understanding this, I think it was too early for Mr M to give up the guaranteed income his DB scheme would provide when he didn't know what his needs in retirement would be. His DB scheme provided a guaranteed and escalating income for life, which wasn't going to be bettered by transferring. And I think it would've provided a useful guaranteed income foundation along with his other DB scheme, which he could use his other pension provision, including his current workplace pension it was recorded he was contributing to, to build upon and likely meet his future income need. I think this was a more appropriate way for Mr M to plan to meet his future retirement income needs.

So I don't think it was in Mr M's best interests for him to transfer his pension just to have flexibility that I'm not persuaded he really needed.

Death benefits

IFM recorded that ensuring Mr M's pension wouldn't die with him and allowing it to be fully inherited by his family was a key objective of his.

The lump sum death benefits on offer through a personal pension was likely an attractive feature to Mr M. I appreciate death benefits are important to consumers, and Mr M might have thought it was a good idea to transfer his DB scheme to a personal pension because of this. But the priority here was to advise him about what was best for his retirement. A pension is primarily designed to provide income in retirement. And I don't think IFM fully explored to what extent he was prepared to accept a lower retirement income in exchange for higher death benefits.

The existing scheme offered death benefits, by way of a spouse's pension, that could've been valuable to his family in the event of his death. I think IFM downplayed the importance and value of this. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was.

So while, the CETV figure would no doubt have appeared attractive as a potential lump sum, the sum remaining on death following a transfer was always likely to be different. As well as being dependent on investment performance, it would've also been reduced by any income Mr M drew in his lifetime. And so it may not have provided the legacy that Mr M may have thought it would.

If Mr M had genuinely wanted to leave a legacy for his family, IFM could've explored life insurance as an alternative. It recorded that he had significant disposable income through which he could've met the associated premiums. And this could've been considered on a whole of life or term assurance basis – which was likely to be cheaper. But there's little evidence IFM did so.

Overall, I don't think different death benefits available through a transfer justified the likely decrease of retirement benefits for Mr M. I don't think that insurance was properly explored as an alternative. And ultimately IFM should not have encouraged Mr M to prioritise the potential for alternative death benefits through a personal pension over his security in retirement.

Summary

I don't doubt that the flexibility, control and potential for higher death benefits on offer through a personal pension would have sounded like attractive features to Mr M. But IFM wasn't there to simply transact what he might have thought he wanted. The adviser's role was to really understand what Mr M needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr M was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr M was very likely to obtain lower retirement benefits and in my view, there were no other particular reasons which would justify a transfer and outweigh this. Mr M shouldn't have been advised to transfer out of the scheme just to achieve flexibility that I'm not persuaded he needed. And the potential for higher death benefits wasn't worth giving up the guarantees associated with his DB scheme. Also, just because Mr M and/or IFM believed the transfer value was high, I'm not persuaded this alone was a suitable reason to transfer.

So, I think IFM should've advised Mr M to remain in his DB scheme.

And I also haven't seen anything to persuade me that Mr M would've insisted on transferring, against advice to remain in the DB scheme. I say this because, while Mr M had some knowledge of investing, I don't think he was an experienced investor or someone who otherwise possessed the requisite knowledge, confidence or skill to go against the advice he was given, particularly in what is a complex area of financial advice.
So, if IFM had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would've accepted that advice.

I'm not persuaded that Mr M's concerns about his death benefits were so great that he would've insisted on the transfer knowing that a professional adviser, whose expertise he was paying for, didn't think it was suitable for him or in his best interests. If IFM had explained that Mr M could meet all of his objectives without risking his guaranteed pension, I think that would've carried significant weight. So, I don't think Mr M would have insisted on transferring out of the DB scheme.

So, I'm upholding the complaint as I think the advice Mr M received from IFM was unsuitable for him.

Putting things right

A fair and reasonable outcome would be for the business to put Mr M as far as possible, into the position he would now be in but for the unsuitable advice. I consider he would have most likely remained in the occupational pension scheme if suitable advice had been given.

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.

For clarity, Mr M has not yet retired, and he has no plans to do so at present. While the Investigator referred to a retirement age of 65, as I discussed and agreed with Mr M, I think fair compensation in this case means it should be based on the scheme's normal retirement age (62) 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 PS22/13 and 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 M's acceptance of the 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 M redress as a cash lump sum payment,
- explain to Mr M before starting the redress calculation that:
    - their 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 DC pension
- offer to calculate how much of any redress Mr M receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr M accepts IFM's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr M for the calculation, even if he ultimately decides not to have any of their redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr M's end of year tax position.

Redress paid to Mr M as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. 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 have been taken as tax-free cash and 75% would have been taxed according to Mr M'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 £190,000, 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 £190,000, I may recommend that the business pays the balance.

My final decision

Determination and money award: I uphold this complaint and require Inspirational Financial Management Ltd to pay Mr M the compensation amount as set out in the steps above, up to a maximum of £190,000.

Recommendation: If the compensation amount exceeds £190,000, I also recommend that Inspirational Financial Management Ltd pays Mr M the balance.

If Mr M accepts this decision, the money award becomes binding on Inspirational Financial Management Ltd.

My recommendation would not be binding. Further, it's unlikely that Mr M can accept my decision and go to court to ask for the balance. Mr M may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 2 January 2024.
Paul Featherstone
Ombudsman