The complaint

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

What happened

In March 2016, Mr E's employer announced that it would be examining options to restructure its business, including decoupling the BSPS (the employers' DB scheme) from the company. The consultation with members referred to possible outcomes regarding their preserved benefits, which included transferring the scheme to the Pension Protection Fund ('PPF'), or a new defined-benefit scheme ('BSPS2'). The PPF acts as a 'lifeboat' for insolvent DB pension schemes, paying compensation to members of eligible schemes for their lifetime. The compensation levels are, generally, around 90% of the level of the original scheme's benefits for deferred pensions. But the PPF's rules and benefits may differ from the original scheme. Alternatively, members of the BSPS were informed they could transfer their benefits to a private pension arrangement.

In May 2017, the PPF made the announcement that the terms of a Regulated Apportionment Arrangement (RAA) had been agreed. That announcement included that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr E's employer would be set up – the BSPS2. The RAA was signed and confirmed in August 2017 and the agreed steps were carried out shortly after.

In October 2017, members of the BSPS were sent a "time to choose" letter which gave them the options to either stay in the BSPS and move with it to the PPF, move to the BSPS2 or transfer their BSPS benefits elsewhere.

Mr E was concerned about what the recent announcements by his employer meant for the security of his pension, so he sought advice. IFM says Mr E was referred to them by another adviser – something Mr E disputes. But in any event, Mr E met with IFM and it completed a financial planning questionnaire with him to gather information about his circumstances and objectives. Amongst other things, this recorded that Mr E was aged 49; he was married with one dependent child and three non-dependent children; he worked full-time and earned around £47,000; his wife also worked and earned around £11,000; they had an outstanding mortgage on their home of around £49,000; they had no other assets or liabilities; and their joint income exceeded their expenditure by around £500 a month. IFM also carried out an assessment of Mr E's attitude to risk, which it deemed to be 'low'.

On 9 October 2017, IFM issued a suitability letter setting out its recommendation. IFM recommended that Mr E transfer his pension because Mr E wanted flexibility to control and tailor his income as opposed to having a pre-set level of income; he wanted to ensure he could retire when he wanted to and not take the risk of having restrictions in place when the scheme either entered the PPF or it became the new BSPS; and Mr E was prepared to accept more risk to achieve flexibility in retirement. IFM recommended a pension provider and two funds (split 70/30) which it deemed matched Mr E's attitude to risk.

Mr E accepted the recommendation and some time afterwards around £464,900 was transferred to his new personal pension.

Mr E complained to IFM in 2022 about the suitability of the transfer advice. He raised a number of complaint points – but in essence he didn't think the advice to give up a guaranteed pension income was suitable for him.

IFM didn't uphold Mr E's complaint. It provided a background to events leading up to the 'time to choose' exercise as I set out above and it also set out Mr E's circumstances and objectives. In summary it said the transfer advice was suitable because:

- Sufficient information was gathered about Mr E's general attitudes, beliefs, opinions and feelings in respect of his circumstances. Mr E's goals were clearly documented. Mr E's objectives pointed towards a transfer.

- Mr E had the knowledge and experience in financial matters to support the recommendation.

- Mr E wished to retire between 55 and 58 on an income of £26,000 once his mortgage was repaid. The monies were to be drawn at a higher level before his received his state pension.

- Mr E wanted flexibility and control rather than being limited by scheme rules or those of the PPF.

- Death benefits were important to Mr E – the advice improved the position taking account of his unmarried status.

- A robust approach was taken to assessing Mr E's attitude to risk and capacity for loss to transfer, which it believed was appropriate to justify the transfer and make the investments at the required level.

Dissatisfied with its response, Mr E referred his complaint to us. Mr E, through his representative said his knowledge of financial matters was poor and his attitude towards investing was cautious. Mr E said he was concerned about the security of his pension yet he was advised to move to a pension which was at significant risk of fluctuation and loss and he wouldn't have time to recover from this. He said there is no guarantee that any lump sum death benefit payable would be greater than the 50% spouse's pension lost as a result of transferring. Mr E also said he doesn't recall IFM completing or receiving a transfer value analysis report '(TVAS') – the reference to the critical yields in the suitability report were a guide only.

An investigator upheld the complaint and required IFM to pay compensation. In summary they said the advice wasn't suitable. They said that it didn't appear IFM had carried out a transfer analysis for Mr E - but based on what it said in the suitability report about the likely growth rates required to match the benefits under the existing BSPS at age 65, Mr E was likely to be worse off as a result of transferring.

And they said there were no other compelling reasons to justify the transfer to outweigh this. For example they said, Mr E had no retirement plans – wanting to retire early was just a desire rather than a firm plan; nothing indicates he needed flexibility; no detailed assessment of Mr E's income needs was carried out and IFM's assertion in its final response letter that he needed £26,000 was not evidenced as being sustainable by transferring anyway; and better death benefits wasn't a suitable reason to transfer. They said if suitable advice had been given that Mr E should retain his DB scheme benefits he would've likely followed that advice.

IFM didn't respond to the investigator's findings.

Because it is assumed that IFM disagrees with the investigator's assessment of the complaint, it was referred to me for 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 E'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.

- I'm not persuaded that IFM carried out a transfer value analysis ('TVAS') specific to Mr E's DB scheme benefits and his transfer value as IFM was required to do by the regulator. Reference in the suitability report to critical yields, or the required investment returns to match the BSPS benefits was based on what seems to be IFM's past experience and typical rates it said it had seen to date. It said investment returns were typically around 6-8% to match the existing scheme at age 65 and around 4% to match the benefits available through the PPF.

- Referring to approximate critical yields was fairy meaningless anyway to Mr E. But, in addition these rates were based on a later retirement age than it was recorded Mr E said was his target retirement age and so wasn't relevant to the advice Mr E had sought. And it was known at this point that continuing in the BSPS in its existing form wasn't an option for Mr E. So reference to BSPS scheme critical yields was somewhat redundant. Knowing they would shortly become available, I think IFM should've waited and carried out individual and specific analysis of the benefits Mr E would've been due under the BSPS2.

- With only these generic critical yields to go on based on a retirement age of 65, given Mr E's recorded 'low' attitude to risk, the discount rate of 3.1% for five years to retirement (age 55) and the regulator's projection rates, I think Mr E was likely to receive pension benefits of a significantly lower value that those he'd have been entitled to at age 55 under either the BSPS2 or the PPF by transferring and investing in line with that attitude to risk. This is because with a shorter term to retirement, I think the critical yields were likely to be far higher than the generic figures IFM referred to in the suitability report analysis for age 65 even after taking account of the fact that under the BSPS2 the benefits were less favourable.

- For this reason alone I don't think a transfer to a personal pension arrangement was in Mr E's best interests.

- IFM recorded that Mr E wanted to retire around *"55-57 probably"* and that he was attracted to the flexibility a personal pension could provide in terms of how and how when he could access his benefits. While at 49 Mr E might have given some thought to his retirement, there's nothing to indicate he had any firm retirement plans. I think the language IFM recorded in the advice paperwork about his plans indicates as much – the use of the word *"probably"* and then in another section of the fact-find *"maybe at 58"* does not describe a firm objective.

- Mr E didn't have to transfer his pension to retire early - he already had this option available to him. While he couldn't take his DB scheme benefits flexibly, nothing indicates he had a strong need to vary his income throughout retirement and no apparent need for a lump sum and defer taking an income. Mr E might have been attracted to the flexibility a personal pension provided – but I think IFM's reference to this was simply a feature or consequence of transferring to a personal pension rather than a genuine objective of Mr E's.

- In any event, Mr E already had flexibility. He was contributing to his workplace pension scheme – a defined-contribution scheme which did provide flexibility in how and when he could access his benefits. Given the 16% contribution being made to this, I think Mr E's DB scheme income along with this would've likely given him the flexibility to retire early - *if* that's what he ultimately decided.

- IFM says Mr E needed £26,000 a year from age 55 to live off once his mortgage was repaid and this wasn't achievable by remaining in the scheme.

  But this figure isn't recorded anywhere in the advice paperwork. No assessment of any kind appears to have been made to arrive at this figure – the retirement income requirements section of the fact-find was blank for example and the income and expenditure section was based on Mr E's current situation. I don't think Mr E reasonably knew at this time was his expenditure would be when he retired and so what his income requirement was; particularly given the range of his intended retirement age. So I think it was too early for Mr E to give up the guaranteed income his DB scheme would provide when he didn't know what his needs in retirement would be or when. I think in the circumstances Mr E stood a better chance of meeting his needs by remaining in his DB scheme. It provided a guaranteed and escalating income for life, which wasn't going to be bettered by transferring. I think this was a more appropriate way for Mr E to meet his future income needs.

- IFM said death benefits were important to Mr E and that the transfer improved the death benefit position. But the priority here was to advise Mr E about what was best for his retirement. And 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.

- While the transfer 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 the income Mr E drew in his lifetime. So, it may not have provided the legacy that Mr E might have thought it would.

- If Mr E had genuinely wanted to leave a legacy for his family, IFM could've explored life insurance as an alternative. Mr E had surplus income each month, so it appears there was capacity to meet 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 I've not seen 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 E. I don't think that insurance was properly explored as an alternative. And ultimately IFM should not have encouraged Mr E to prioritise the potential for alternative death benefits through a personal pension over his security in retirement.

- Mr E may have legitimately held concerns about how his employer had handled his pension and he was likely worried about ending up in the PPF. But it was IFM's role to objectively address those concerns. At the time of the advice, all signs pointed toward the BSPS2 being established. But even if not, the PPF still provided Mr E with guaranteed income, the option of accessing tax-free cash and despite what IFM recorded at the time, he could still take early retirement. Mr E was unlikely to improve on these benefits by transferring. So, entering the PPF was not as concerning as he might've thought, and I don't think any concerns he held about this meant that transferring was in his best interest.

Overall, I can't see persuasive reasons why it was clearly in Mr E's best interest to give up his DB benefits and transfer them to a personal pension at this time when he had the option of opting into the BSPS2. And I also haven't seen anything to persuade me that Mr E would've insisted on transferring, against advice to remain in the DB scheme – he had little or no investment knowledge or experience and nothing suggests to me that he had the requisite confidence or skill to do so. So, I'm upholding the complaint as I think the advice Mr E received from IFM was unsuitable for him.

I can see the investigator also recommended an award of £200 for the distress and inconvenience the matter has caused Mr E. So I've also thought about whether it's fair to award compensation for distress and inconvenience - this isn't intended to fine or punish IFM – which is the job of the regulator. But I think it's fair to recognise the emotional and practical impact this had on Mr E. Taking everything into account, including that I consider Mr E is now at the age when his retirement provision is of greater importance to him, I think the unsuitable advice has caused him distress. So I think an award of £200 is fair in all the circumstances.

Putting things right

A fair and reasonable outcome would be for the business to put Mr E, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr E would most likely have remained in the occupational pension scheme and opted to join the BSPS2 if suitable advice had been given. While Mr E indicated a desire to retire early, because he had no firm plans, I think the BSPS2 was the most appropriate option in the circumstances.

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 IFM and the Financial Ombudsman Service upon completion of the calculation together with supporting evidence of what IFM based the inputs into the calculator on.

For clarity, Mr E has not yet retired, and 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 E'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, Mr E should:

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

Redress paid to Mr E 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 have been taken as tax-free cash and 75% would have been taxed according to Mr E’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.

My final decision

Determination and money award: I uphold this complaint and require Inspirational Financial Management Ltd to pay Mr E 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 E the balance.

Inspirational Financial Management Ltd should also pay Mr E £200 for the distress and inconvenience this matter has caused.

If Mr E 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 E can accept my decision and go to court to ask for the balance. Mr E 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 E to accept or reject my decision before 9 November 2023.
Paul Featherstone
Ombudsman