

The complaint

Mr S complains about the advice given by Capital Professional Limited trading as Ascot Lloyd (Ascot) to opt out of his defined-benefit ('DB') occupational pension scheme. He did this so he could transfer the value of it to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss. He cannot now re-join his DB scheme.

What happened

Mr S approached Ascot in September 2019 to discuss his pension and retirement needs. He has said he wanted to transfer as:

- He wanted to retire early - which he thought he may not be able to do in the DB scheme.
- He had concerns about the future of his employer, which could've affected his pension.
- He was aware the market was particularly favourable for transfer values.
- His family could benefit from his fund value on his death.

Ascot gathered some information about Mr S' pension arrangements and it initially informed him that, as he was under age 50, it wouldn't advise on a DB pension transfer.

But both sides have provided a series of text messages which cover this early contact. The most relevant section of these is below:

Mr S: Hi Ascot. I need to put my form into payroll tomorrow morning at the latest to pull out of the pension scheme for this month's payroll for Oct 28. Can you foresee any problems in me doing this? Thanks."

Ascot: Hello Mr S, I have spoken to our technical team and they have confirmed that the transfer makes sense to them and there shouldn't be a problem. Ascot.

Mr S: 'Thanks Ascot. I'll go ahead and hand the form in to leave the pension scheme then.'

Mr S: 'I'm officially out of the scheme now, I received email notification earlier. Are there any other funds I can consider, such as Scottish Widows? Thanks.'

Ascot: 'With the investment choices we are Independent Advisers, our team regularly review the investment options on the market to ensure we are providing the best investment solution. At the next meeting we can go more in depth to the investment options'.

Mr S and Ascot remained in contact and both parties worked towards giving Mr S advice in May 2020 when he reached age 50. In May 2020 Ascot issued a suitability report that advised him not to transfer the benefits out of his DB scheme.

Mr S then complained to Ascot as above.

Ascot has upheld Mr S' complaint. It has said that it didn't provide him with enough warnings that the transfer might not be in his best interests. So, it offered to:

- Pay the contributions that Mr S had lost out on as he was no longer a member of the scheme. It calculated this to be £34,145.52.
- Put in place the life cover that Mr S would have had, if he had remained a current member of the scheme.
- Pay £300 for the distress and inconvenience this matter had caused Mr S.

Mr S referred his complaint to our service. An investigator wasn't initially aware of the text messages I've referred to above, and so he didn't think we could consider this complaint. This is because it seemed like Mr S had made the decision to leave the scheme himself.

But after further evidence was provided about the contact between the two parties, he upheld the complaint. He said that whilst Ascot had not given full advice until after Mr S had opted out of his company scheme it was reasonable for him to think that, due to the content of the text messages, that leaving his occupational scheme was the right course of action. It was noted that Ascot had already agreed that it should've provided more information to Mr S, and the fact that it hadn't done so, had likely led to him leaving his DB scheme.

Our investigator recommended that, as far as possible, Ascot put Mr S back in the position he would be in had he not left his DB scheme. This was best done by calculating any loss he may have suffered using the guidance given under the pension review.

Ascot disagreed, it said the situation was complicated and that it would like an ombudsman to review it.

Mr S also doesn't fully agree. He thinks that the compensation of £300 that has been recommended for the distress and inconvenience should be much higher. He has outlined how this issue has caused him a great deal of stress and has impacted on both his and his wife's healthYour text here

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.

Although I have only included a summary of the complaint, I have read and considered all the evidence and arguments available to me from the outset.

When considering what is fair and reasonable, I am required to take into account the relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Having done so, I've decided to uphold the complaint for largely the same reasons given by the investigator.

I don't think there is any real dispute that a DB transfer wasn't in Mr S' best interests as Ascot's suitability letter advised Mr S not to transfer. And it has accepted that it should also have done more to advise him to stay in his DB scheme whilst it completed the advice process.

Overall, I agree Ascot should've advised Mr S to remain in his DB scheme, whilst it was in the process of giving advice. The texts message above show that it didn't do this, in fact it confirmed that a transfer '*made sense*'. This indicated to Mr S that Ascot would advise him to transfer his DB scheme benefits when it gave advice later on. And Mr S clearly acted on this communication and left his DB scheme.

I've considered whether Mr S would've gone ahead anyway, against Ascot's advice. Whilst Mr S clearly saw some advantages to transferring his DB pension benefits away, I don't think he had decided to do so when he was in contact with Ascot. And it's also clear that he has taken on board what Ascot says in the suitability report and realised that his best course of action would have been to remain in his DB scheme. And, overall, he hasn't transferred. This is the clearest indication of what he would've done if Ascot had acted correctly.

It's difficult to say with certainty what Mr S would've done, or will do, in the future but Ascot's mistake has undoubtedly put him in a worse position – and it should put things right by returning him to as close a position as he would've been if he hadn't opted out of his occupational scheme.

Whilst I've thought about the offer Ascot has made to Mr S already I don't think this adequately compensates him for the loss he may have suffered. The regulator's pension review guidance as updated by the Financial Conduct Authority in its Finalised Guidance 17/9 says firms can use the guidance as the basis for loss calculations in opt out situations. I think this is most appropriate redress method. The pension review loss assessment will compare the benefits he would have received if he had remained in the scheme with those he will get now as he is no longer a member. These losses aren't limited to the life cover benefits and the reduced employer contributions.

The compensation will likely take the form of a lump sum payment – either to Mr S directly – or into a personal pension he owns. It will essentially provide a sum of money that will enable him, as far as it is possible, to provide the benefits he would have had if he had remained in the scheme.

Mr S is concerned about the loss calculation as he's told us the underlying investments of the DB scheme will negatively affect the transfer value now compared to the value when he opted out. However, I think the regulators loss assumptions are the fairest way to put things right as it was designed for situations such as this. The value assigned to Mr S' DB scheme benefits in the calculation is worked out on the estimated value/cost of providing his benefits and not the underlying investments within the DB scheme.

In light of the above, I think Ascot should compensate Mr S for the unsuitable advice, using the regulator's defined benefits pension transfer and opt out / non joiner redress methodology.

Ascot, and our investigator, thought that £300 was reasonable compensation for the distress and inconvenience this issue had caused Mr S. I've seen that Mr S doesn't agree, and I've noted why he feels this way. I can see that this issue has been very upsetting for Mr S. But the compensation I'm awarding will, as far as possible, put him back in the position he would have been had the business not made this error. So, he'll be compensated for that. And it's this error that has caused the distress and inconvenience. So, I don't think I should award any further compensation in this instance, over and above what the investigator said.

Putting things right

A fair and reasonable outcome would be for Ascot to put Mr S, as far as possible, into the position he would now be in but for Ascot's unsuitable advice. I consider Mr S would have most likely remained in his DB scheme if suitable advice had been given.

Ascot should attempt to have Mr S re-instated in his DB scheme. I understand Mr S has already been told he's unable to re-join. But Ascot Lloyd should speak with the scheme directly and ask whether it would be possible to reinstate Mr S. This would be the best way to ensure he's put back in the same position he'd have been in had the mistake not been made.

If his DB scheme won't allow Mr S to re-join Ascot must undertake a redress calculation in line with the regulator's pension review guidance as updated by the Financial Conduct Authority in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers.

For clarity, Mr S has not yet retired. But I can see that he has fairly well developed plans to do this at age 55. So, compensation should be based on a retirement age of 55.

This calculation should be carried out as at the date of my final decision and using the most recent financial assumptions at the date of that decision. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr S' acceptance of the decision.

Ascot may wish to contact the Department for Work and Pensions (DWP) to obtain Mr S' contribution history to the State Earnings Related Pension Scheme (SERPS or S2P). These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on Mr S' SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should, if possible be paid into a pension plan Mr S has. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into a pension isn't possible or has protection or allowance implications, it should be paid directly to Mr S as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to his likely income tax rate in retirement - presumed to be 20%. So, making a notional deduction of 15% overall from the loss adequately reflects this.

The payment resulting from all the steps above is the 'compensation amount'. This amount must where possible be paid to Mr S within 90 days of the date Ascot receives notification of her acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes Ascot to pay Mr S.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above - and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won't apply.

Where I uphold a complaint, I can award fair compensation of up to £355,000, 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 £355,000, I may recommend that the Ascot pays the balance.

Ascot should also pay Mr S £300 for the distress and inconvenience this issue has caused him.

My final decision

Determination and money award: I uphold this complaint and require Ascot to pay Mr S the compensation amount as set out in the steps above, up to a maximum of £355,000.

Where the compensation amount does not exceed £355,000, I would additionally require Ascot to pay Mr S any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £355,000, I would only require Ascot to pay Mr S any interest as set out above on the sum of £355,000.

Recommendation: If the compensation amount exceeds £355,000, I also recommend that Ascot pays Mr S the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr S.

If Mr S accepts this decision, the money award becomes binding on Ascot.

My recommendation would not be binding. Further, it's unlikely that Mr S can accept my decision and go to court to ask for the balance. Mr S 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 S to accept or reject my decision before 17 June 2022.

Andy Burlinson
Ombudsman