

The complaint

Mr S complains about Abacus Money Management Ltd's handling of his request to transfer the funds from his occupational pension defined benefit ('DB') scheme to another pension with flexible benefits. Mr S believes that as a result of Abacus' handling of the matter he's lost out financially.

Provisional decision

On 30 May 2023 I issued a provisional decision. For ease of reference I've copied the relevant extract below. I said:

"What happened

Mr S approached Abacus in 2021 to discuss his pension and retirement needs. Abacus completed a fact-find to gather information about his circumstances and objectives. It learnt that Mr S was a deferred member of his employer's DB scheme. He was also an active member of the employer's defined contribution (DC) pension scheme. Both he and his employer were making regular contributions into that pension. At the time Mr S, who was aged 60, was already eligible to access the majority of the benefits from his DB scheme. Although, some of those benefits would only become payable (at their full amount) at age 65. He didn't plan to retire until 66.

Mr S said the reasons he wanted to transfer included the ability to take the maximum 25% tax free cash ('TFC') from his pension funds straightaway to use for other interests, in particular to invest with a property developer.

Mr S' DB scheme administrators provided a cash equivalent transfer value ('CETV') of around £591,446. That CETV was guaranteed until 12 November 2021. Abacus gathered more information from the administrators of Mr S' pensions. Abacus also ran an appropriate pension transfer analysis ('APT') report" which included a transfer value comparator ('TVC'). The TVC indicated that, in order to buy a pension product which matched the benefits from his DB scheme in the open market would cost Mr S £800,896, which was £209,240 more than his CETV.

On 11 November 2021 Abacus sent Mr S its suitability report setting out its analysis and advice. Abacus said that if Mr S' aim was to match the benefits from his DB scheme by transferring then it would strongly recommend that he didn't do so. But, as that wasn't Mr S' aim, it recommended he should transfer his DB scheme funds into his workplace DC scheme. Abacus said that by transferring to his DC scheme, amongst other things, Mr S could:

- Access the maximum TFC of £147,861 to help with his interest in property development.*
- Take his pension by means of flexi-access drawdown.*
- Begin drawing income from his pension while leaving the remainder invested.*
- To leave a legacy for his adult children in the event of his death.*

However, the suitability report also noted that Mr S' DC scheme did not allow flexi-access drawdown¹. It said Mr S would need to take his TFC first and then transfer to another arrangement in order to do that.

Abacus charged Mr S £6,000 for providing its advice.

Mr S accepted Abacus' recommendation and signed the forms to complete the transfer the next day.

Around a month later Abacus emailed Mr S. It said that when it had submitted the paperwork to the DB scheme administrators it had omitted one document and the CETV was no longer secured. Abacus said, as this was its mistake, it had begun the steps to obtain a new CETV. It said that if the CETV fell, as this was its mistake, it would cover any difference.

In January 2022 the DB scheme administrators provided a new CETV. The figure had increased to almost £607,000 and was guaranteed until 30 March 2022. Soon after, on 18 January 2022 Abacus submitted the forms to transfer the new CETV to Mr S' DC scheme.

The next day (19 January 2022) Mr S said he was having second thoughts and asked Abacus to stop the transfer, which it did. Then, a day later, Mr S confirmed he did want to go ahead with the transfer. So Abacus started the ball rolling again.

The DB scheme administrators then contacted Mr S directly to ask if he wanted the transfer to continue. He asked Abacus for guidance and it told him that he should confirm with the scheme that he wanted the transfer to proceed, which he did. He then emailed Abacus and said that, after speaking with the DC scheme administrators he thought his funds might need to be transferred into a self-invested personal pension (SIPP). In March 2022 Abacus told him that the transfer advice was unchanged. But that Abacus would ask the DC scheme to leave the funds in cash so that they could then be transferred to a named SIPP provider – who I'll call R. It said that by doing that Mr S wouldn't be exposing the TFC element to market volatility and once he'd taken that he could reinvest the remainder.

On 5 April 2022 Abacus told Mr S that it had sent him a report concerning a transfer to R (I haven't been given a copy of this report).

That month Mr S told Abacus that the DC scheme had advised him if he transferred his DB funds into the DC pension then he wouldn't be able to take his TFC from it. That is, he would need to access all his pension benefits at the same time, which would involve him buying an annuity. His other option was to transfer out of the DC scheme completely. Abacus then made enquiries of the DC scheme administrators to see if taking TFC would affect Mr S' membership of that scheme. The administrators replied the next day. Abacus sought clarification of its answer. In the meantime the DB scheme administrators asked Abacus for confirmation the transfer was going ahead.

In May 2022 Mr S wrote to Abacus expressing his concerns about the lack of progress. Abacus replied that it was seeking information from the DC scheme to see if he could make a partial transfer – of his TFC – out of it. But it said it had secured the CETV figure.

¹ This is a flexible method of taking pension income. It allows the pension holder to take sums from their pension pot as and when they wish to, leaving the remaining pot invested.

After a further update from Abacus about outstanding enquiries with the DC scheme, on 28 May 2022, Mr S asked why the DC scheme was involved as he believed the funds would be transferred to R.

After a phone discussion with Abacus in June 2022 it confirmed that Mr S would be unable to take a partial transfer from the DC scheme. It suggested Mr S should ask for a new CETV and take things from there. Around a fortnight later, after Mr S had asked for a new CETV, he emailed Abacus. He said the DB scheme administrators had phoned him to ask if the transfer to the DC scheme was going ahead. He told them that was "not happening".

On 27 July 2022 the DB scheme administrators provided a new CETV, the value was around £445,000.

On 31 July 2022 Mr S wrote to Abacus to complain. He said it had been his intention from the start to take TFC. But Abacus had recommended he transfer his DB funds into his DC scheme which wouldn't allow him to take TFC. He said he'd recently received a revised CETV and the value had dropped by £146,000 from the original figure to around £445,000. He said he'd spoken to Abacus but, unlike when the CETV had reduced in December 2021, on this occasion Abacus had refused to make up the shortfall.

Abacus replied. Its lengthy response included that regulations required it to see if Mr S' workplace (DC) pension was appropriate to receive a transfer and that Mr S had not indicated that this wouldn't be suitable. It said it hadn't been happy with Mr S' suggestion at the outset to take his TFC and leave it to sit as cash in his bank. It also said that Mr S' decision to end the process on 19 January 2022 had caused some of the issues he was complaining about.

Abacus added that it had made a number of unanswered enquiries about whether Mr S could take a partial transfer from the DC scheme. And it wanted to go ahead with that transfer as that would secure the CETV figure. But after Mr S told the DB scheme administrators the transfer was no longer going ahead that had ended the process. It said an alternative would have been to allow the transfer to go ahead into the DC scheme; Mr S could then have transferred out of that and then re-joined the DC scheme. Abacus didn't think it was responsible for any fall in the CETV figure and hadn't caused Mr S to suffer a loss. It said he still had full entitlement to his DB scheme benefits. But, it did agree that its administration hadn't been "perfect" so it offered Mr S £500 by way of redress.

Mr S brought his complaint to our Service. One of our Investigators looked into it. He thought Abacus' offer to settle the complaint was reasonable. Mr S didn't agree so it's been passed to me to decide.

Having reviewed the file I noted that some of the evidence Abacus had sent to us had corrupted and I was unable to read it. I asked it to resupply that evidence. I also asked it to provide me with notes of any meetings or phone calls. While Abacus sent us the previously corrupted evidence, despite a second request it didn't ever send me copies of meeting or telephone notes. While that is disappointing, and I think that evidence would have been helpful, I'm satisfied I have enough information on which to reach a fair and reasonable conclusion without it.

What I've provisionally 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 bringing this complaint and in replying to it both Mr S and Abacus have made a number of points. I've considered everything on file but in this decision I don't intend to address each and every issue raised. Instead I will focus on what I see as being the key issues at the heart of Mr S' complaint and the reasons for my decision.

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 Business ('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. Having done so it's likely I'll uphold the complaint.

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 Abacus's actions here.

PRIN 3: A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

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.

Should Abacus have completed the transfer initially?

DB pensions are a valuable resource and their benefits are often considered to be difficult to match (at a similar cost) from other pension products available on the open market. Transferring from a DB scheme is a complex process. And, once a consumer has transferred there's no going back – the benefits are lost forever. So advising firms like Abacus need to be satisfied that a transfer is in a consumer's best interests before making that recommendation.

There are typically a number of stages involved in the DB transfer process. As well as gathering information from Mr S, Abacus had to request evidence from the DB scheme administrators, obtain an APTA, including a TVC, analyse Mr S' needs and objectives in retirement and consider an appropriate alternative pension arrangement.

Having taken those steps Abacus could make a personal recommendation which it needed to set out in writing before taking Mr S' instruction about what he wanted to do. Abacus went

through all those stages initially and, while those things all took time, I've seen no evidence of any unreasonable delay by Abacus in the initial evidence gathering and analysis process. But, by the time it had produced its suitability report, Abacus had only one day left before the CETV guarantee expired. But it was still in a position to secure the CETV and arrange the transfer for Mr S.

However, because it omitted to include some of the information the DB scheme needed the CETV expired. Had that not happened it seems likely that the transfer would have progressed. Although, as I describe below, given what happened later it's possible that the transfer might not have completed if Mr S learned of the limitations of the DC scheme before the transfer had gone ahead.

However, I can understand that, at that time, Mr S must have been disappointed by the failure of the transfer. He was expecting it to go ahead and to give him access to a considerable TFC sum. But because of Abacus' mistake that didn't happen. That's said, I think Abacus took reasonable steps to put things right at that time. It requested a new CETV and paid the fee for that. It also offered to make up any shortfall should the CETV have reduced. I think that was a reasonable response at the time. So I've gone on to consider what happened after that.

Was Abacus' recommendation to transfer to the DC scheme appropriate?

Once the revised CETV arrived in January 2022 it had increased by over £15,000. And given that Abacus had already gone through all the other steps, arranging the transfer should have been a straightforward process. In fact, Abacus sent off the forms to secure the CETV on 18 January 2022. But before that process was completed Mr S learned of a potential problem with transferring his funds into his workplace DC scheme. That was, the rules of the scheme would not allow him to take his TFC separately. The DC scheme would let him take TFC and use the remaining funds to buy an annuity. But he'd have to do that at the same time. The only other option for him was to transfer all of his funds out of the DC scheme into another personal pension or SIPP. That would mean leaving the DC scheme in its entirety, which wasn't something Mr S wanted to do.

When making a personal recommendation to transfer out of a DB scheme COBS 19.1.1C(2)(a) required Abacus to determine which alternative arrangement was suitable for Mr S. And that included an analysis of how Mr S wanted to take his funds from it.

Mr S had clearly said from the outset that he wanted to use his TFC "immediately". And Abacus had itself noted that he intended to take it straightaway. Further its suitability report says that one of the reasons for its recommendation was that it would allow Mr S to access his TFC to pursue his interest in property development. But the DC scheme didn't allow for that. So it wasn't suitable for Mr S' requirements at the time.

In response to our enquiries Abacus suggested that taking TFC straightaway wasn't important to Mr S until after it had secured the CETV sum. It implied that only happened because a property development opportunity arose. So it said Mr S' objectives had changed.

But I don't accept that argument. As I've said above the evidence is clear that Mr S had always wanted to access his TFC soon after the transfer, although he didn't appear to have any definite plans for it at the time he initially approached Abacus.

I'm aware that Abacus didn't think Mr S should take the TFC straightaway and leave it sitting uninvested in cash, which Mr S seems to have accepted at the time. But the evidence shows that Abacus was working under the misapprehension that Mr S could take his TFC from his

DC scheme and leave the rest of the funds invested. But the DC scheme rules didn't allow that.

I say that because, while noting the DC scheme didn't allow flexi-access drawdown Abacus said in its suitability report that Mr S would be able to take TFC and that he could transfer to a flexi drawdown arrangement at a later date. Also, once Mr S raised the issue of not being able to access TFC without transferring out of the DC scheme entirely, Abacus spent some weeks seeking clarification from the DC scheme administrators about whether or not Mr S could do that. Abacus clearly believed he could but he couldn't. This is something that Abacus should have found out before making the recommendation to transfer into the DC scheme. If it had done the appropriate research at the outset it would have realised that the DC scheme didn't fit with Mr S' objectives and so didn't meet his needs. And I don't accept Abacus' arguments that this only became an issue after a property development opportunity came Mr S' way. It was something he always wanted to do, so I don't believe his objectives changed.

Further, after Mr S raised the issue, Abacus then began exploring whether he could transfer into a SIPP. This is something Mr S says was discussed at the outset. So it's not clear to me why Abacus chose to recommend the DC scheme rather than a SIPP. Although it might well have been because a SIPP would likely have charged Mr S higher fees. But a SIPP or similar arrangement would have met Mr S' requirements both to allow him to take his TFC immediately but also to access his funds in a flexible way, when the DC scheme didn't. And Abacus told us that it had asked the DB administrators if it could change the recipient pension destination of the transfer to a SIPP but they wouldn't allow it without Mr S having received a new CETV. So, if Abacus had recommended the SIPP in the first place it seems likely that the transfer would have gone ahead. But it didn't because of Abacus' unsuitable recommendation.

Abacus told us that it had to consider whether the DC scheme was a suitable arrangement to transfer Mr S' DB funds into. I agree that's the case. But the DC scheme plainly wasn't suitable. It didn't offer flexi access drawdown, which Abacus said was one of the advantages of making the transfer. Also Mr S couldn't access his TFC funds from the DC scheme without transferring to another arrangement altogether and losing his ongoing benefits from the DC scheme. I think Abacus should have been aware of that. So it shouldn't have recommended the DC scheme for the transfer in the first place.

Abacus also said the reason that the transfer didn't happen was because of Mr S' actions in telling the DB scheme administrators that it wasn't going ahead. It said that, in taking that action, he lost the secured CETV sum. I accept that Mr S telling the DB scheme that he didn't want the transfer to go ahead brought the process to an end at that point. But I think Abacus' action had forced Mr S into this. It had recommended transferring his pension to a scheme that wasn't suitable for his needs. He could have allowed that to go ahead, but in order to access the benefits from it, he would then have needed to leave his DC scheme. Something he didn't want to do. So when the DB scheme administrators phoned and asked him if the transfer was going ahead to the DC scheme he said it wasn't. That seems an entirely reasonable answer in the circumstances. And I've seen no evidence that Abacus had previously warned him of the implication of taking this action. In fact, at that time, it had told him to sit tight and wait for the new CETV which he'd recently asked for. And it had sent him a report concerning transferring into a SIPP. So I can understand that Mr S wouldn't have realised the potential repercussions of telling the DB scheme that the transfer to the DC scheme wasn't going ahead.

The only way Mr S could have transferred at that time would have been if he'd allowed it to go to the DC scheme. And in order to take TFC or access the benefits flexibly he would have been required to transfer out of the DC scheme in its entirety. Mr S told us that would involve

him losing privileges from his employer. And I can understand why he didn't want to do that. But he was only put in that position because Abacus' recommendation to transfer to his DC scheme wasn't suitable for him. So I don't think Abacus dealt with him fairly and reasonably here. I've gone on to consider the implications of that.

Did Mr S lose out because of Abacus' actions?

I'm aware that Mr S thinks that, on two occasions, Abacus's mistakes caused him to lose out. First when Abacus didn't send all the required paperwork in November 2021; second, as described above, when it made an unsuitable recommendation for the destination of his funds. And, during that process, his CETV had fallen in value by around £146,000. But that doesn't mean that Mr S is out of pocket.

As I've said above a DB scheme membership is a valuable resource. The member will receive a guaranteed, risk free and increasing pension from when they take it until they die. And, as I've said above, those benefits are difficult to match. For example when Abacus calculated a TVC it showed that buying equivalent benefits to the DB scheme on the open market could cost Mr S an additional £209,450. That is over 35% more than the value of his DB scheme. But, as the transfer didn't go ahead Mr S retained his DB scheme benefits.

While the CETV changed, that doesn't mean his DB scheme benefits are worth any less, it simply means that the market rates used to calculate the CETVs have altered. And that is why CETVs are only usually guaranteed for three months, because their value changes in line with movements in the financial markets. But, a fall in CETV sum is not the same as a fall in the worth of his DB scheme benefits. And Mr S remains a member of the DB scheme, so he hasn't lost out in terms of his retirement income.

That said I understand that Mr S has lost out on the opportunity to transfer his DB scheme funds and access those flexibly at a time when the markets were favourable to CETV rates. And that meant that he could have taken a higher TFC sum. So I can understand his immense disappointment that he wasn't able to take that opportunity because of Abacus' errors. So I've thought about what Abacus needs to do to put things right below. However, I'll first address another of Mr S' complaint points.

Mr S' personal information

When he complained Mr S pointed out that in January 2022 Abacus had mistakenly posted his personal information to an individual entirely unconnected with him. The person concerned phoned Mr S to say that she'd received that information and Mr S was able to recover it. While this Service is not the appropriate body to rule on whether this constitutes a data breach, Abacus appears to accept that this was a data breach. But I note that Abacus chose not to address this point at all when it responded to the complaint.

Mr S told us Abacus had informed him that, because of the data breach, it would refer the matter to its regulator – the Financial Conduct Authority (FCA) or to the Information Commissioners Office (ICO). We asked Abacus if it had done either of those things. It told us that, as Mr S' personal information hadn't made it into the public domain, it didn't think the data breach was serious enough to warrant referral to another body. It added that it had learned lessons from the incident.

It's not for me to decide which matters require reporting to the FCA or ICO. But I think that as a minimum Abacus should have written to Mr S to apologise for the incident and to explain to him what action it had taken to prevent a recurrence of the incident. It should have also let him know that it didn't intend to refer the matter to the FCA or ICO. That could have allowed

Mr S to consider his options, including making a referral to the ICO himself if he wanted to. And that is still a course of action open to him if he wishes to pursue it.

Putting things right

I can understand Mr S suffered frustration and exasperation as a result of Abacus' mistakes. But as I've said, he remains a member of his DB scheme and so I don't think he's lost out financially. But he has undoubtedly suffered a significant loss of expectation. He wanted access to an increased amount of TFC to allow him to engage in property development. He thought he'd achieve that higher TFC figure by engaging Abacus' services. And he paid it a fee of £6,000 in order to enable that. But, because of the mistakes I've set out above that didn't happen and Mr S will need to rethink his plans.

Mr S paid for a service that wasn't fit for purpose and ultimately wasn't of any benefit to him. And in those circumstances I don't think it was fair for Abacus to retain its fee. So I think it should repay Mr S the £6,000 he paid to it. And, as he's been without the use of that money since then, it should add simple interest to that sum, at a rate of 8% a year, from the date Mr S paid the fee to the date Abacus refunds him.

Additionally, it's clear from Mr S' correspondence that he's found the whole process immensely upsetting and that he still believes he has suffered a loss. And the matter has dragged on for an extended period of time. In order to put things right I think Abacus should pay Mr S £750 compensation in total to address this."

Developments

Mr S made a number of points in response to my provisional decision. Amongst other things he said he believed he'd lost out considerably because of Abacus' actions. He said the scheme benefits and those available from a transfer are vastly different. His choice was that transferring had more to offer. And, if he'd intended to take the scheme benefits he had no reason to engage Abacus in the first place.

Mr S added that in 2021 his CETV was over £600,000, with TFC of around £150,000. The scheme would offer TFC of around £92,000, a difference of around £58,000. He said the difference was "*staggering*". He said the TFC sum on offer from transferring was "*life changing*". He added that he's lost the opportunity to reinvest it as he wished, which would see the potential for it to grow by 10% a year.

Mr S said that remaining in the scheme would result in him paying tax on that income as he intends to keep working. But if the transfer had gone ahead he could have reinvested the balance after the TFC to hopefully grow until he needed it without paying tax on it. Abacus had told him that his funds, if reinvested, would last the remainder of his life.

Mr S also said that Abacus stood to lose little from my decision. And he believed he was due "*considerable compensation*". He questioned whether the schemes "annuity" figures had been made available to me previously.

Abacus also gave its comments on my provisional decision.

Amongst other things it asked why I had referred to PRIN 3 – regarding adequate systems. It said it had adequate systems in place and while it had made mistakes it had addressed those.

In terms of PRIN 6 which says “*A firm must pay due regard to its customers and treat them fairly*”; Abacus said this needs to be balanced against the risk of “*consumer detriment*”. It said I hadn't quoted any of the rules from the FCA's Finalised Guidance FG21/3.

Referring to that guidance (FG21/3), Abacus quoted where it points out that the DB transfer advice process should be a two stage one. Those being: whether to give up safeguarded benefits; and where to transfer the funds to if the transfer proceeds.

FG21/3 says the two are not separate and advising firms fees should not be contingent on the advice going ahead.

Abacus added the fee it charged was for its advice and not for the implementation of the transfer. It said it was required to consider if Mr S' DC scheme was suitable and only recommend an alternative where that was more suitable. It said the DC administrators replies to Abacus' queries were confusing, and they still hadn't been adequately answered by the time Mr S cancelled the transfer. So Abacus couldn't know whether an alternative arrangement was more suitable and so wasn't required to recommend one.

In terms of PRIN 7 Abacus said it had always been clear and fair with Mr S.

Abacus added that my award of a refund of its fee didn't reflect the aspects of its service which it provided adequately.

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.

Both Abacus and Mr S provided a number of comments on my provisional decision. I've briefly summarised those above. I don't intend to address each and every point individually. Instead I will address those that further explain the reasons for my decision

Abacus' remarks

Abacus commented on my referring to some of the rules, regulations and requirements that I considered. I'll explain that my determination isn't limited to considering those I specifically set out. And, as I've said above, I refer to those to give context to the types of information I consider when arriving at my decision. And those will generally apply to decisions that I don't uphold as well as the ones I do.

That said, Abacus asked why I referred to PRIN 3: “*A firm must take reasonable care to organise and control its affairs responsibly and effectively with adequate risk management systems*”. Abacus sent Mr S' personal information to an individual who had no connection with him. So, I thought it was a relevant consideration when considering the impact of this on Mr S.

Referring to PRIN 6: “*A firm must pay due regard to its customers and treat them fairly*”. Abacus said that had to be balanced against consumer detriment. But it hasn't explained what it means by this or how it applies to this case.

In the same context Abacus added that I hadn't quoted from FG21/3. As I expand on below, Abacus did refer to some specific paragraphs from FG21/3, but it didn't put these into the context of how they applied to PRIN 6. And I think PRIN 6, along with the client's best

interests rule (COBS 2.1.1R), are overarching principles and rules that apply to almost every pension transaction. So they paint the picture of the approach firms should adopt when advising consumers on something as important as a DB transfer.

Further, it might help if I explain that FG21/3 is an ancillary guide for the use of advising firms like Abacus. It was developed to assist them understand how to apply the regulator's Handbook rules and guidance (PRIN and COBS) when giving DB transfer advice. FG21/3 intended to help firms identify weaknesses in their existing processes. And, while it is undoubtedly a useful resource it doesn't actually set out the rules that apply. So, I'm not under any obligation to refer to it when explaining the reasons for my decision.

Abacus referred explicitly to guidance from FG21/3 about the stages involved in giving DB transfer advice. Those are about the suitability of that process; not about what the outcome would be at the end. Abacus said it charged its fee on that basis. However, in this case, having decided that a transfer was suitable for Mr S Abacus was then required to recommend a suitable alternative arrangement for the destination of those funds. As I've said above in making that recommendation Abacus needed to consider how Mr S intended to access his funds. It knew Mr S wanted to access his TFC immediately. But the DC pension it recommended didn't allow him to do that. So it wasn't suitable for him. And he couldn't then draw down funds as he wanted, which was one of Abacus' reasons for saying that the transfer was suitable initially.

Abacus said that because some of the DC scheme administrators' answers were unclear, it couldn't be sure that Mr S might be better off in an alternative arrangement to the DC scheme. But if it didn't know what flexible options the DC scheme offered then I don't think Abacus had appropriately researched its suitability for Mr S' needs. And in those circumstances I don't think it should have recommended it as a destination for the transfer of funds. If Abacus had done the appropriate investigation at the outset before providing its suitability report, then it would have realised the DC scheme wasn't a suitable destination for Mr S' DB funds. But it didn't do the appropriate investigation and so made an unsuitable recommendation.

I appreciate that, as set out above, DB transfer advice is a multi-stage process including considering both the suitability of a transfer for the customer's need, and the suitability of the proposed alternative arrangement. But in this case, because of Abacus' failures in identifying a suitable receiving arrangement, by the time the matter had concluded, the CETV had fallen to such a level that the DB transfer was now unsuitable at all stages. That was a situation that arose because of Abacus' errors. And as such the entirety of its advice process wasn't fit for purpose. So, I think it's reasonable that Abacus refunds Mr S his fee and adds simple interest to that refund as set out below.

Abacus also referred to PRIN 7: communication is clear, fair and not misleading. Abacus said it was always clear and fair with Mr S. I'll remind Abacus that we twice asked it for copies of meeting notes and telephone calls but it didn't provide those. So I can't know to what extent it met this principle. But I have seen that on a number of occasions it seemed to deflect blame for its own errors on to Mr S. For example, it said the problems he encountered were in part because he told Abacus, on 19 January 2022 that he'd had second thoughts. However, while that wasn't ideal, he told Abacus the next day that he did want to go ahead and the process picked up again instantly. I've seen no evidence that this short pause in proceedings in any way influenced Abacus to make an unsuitable recommendation for the destination of his funds.

Similarly, Abacus also suggested the reason the DC scheme was unsuitable was because Mr S had changed his objectives. But, as I said in my provisional decision the evidence was clear that Mr S had always wanted immediate access to his TFC. So I still think this was a mistake made by Abacus. And I don't think its communication with Mr S has always been clear, fair and not misleading.

Mr S' comments

I'm grateful to Mr S for taking the time to respond to my provisional decision. I do understand that keeping a DB scheme entitlement is not the same as accessing benefits from a flexible alternative.

But, as I've said above, the starting point for advising firms when considering a transfer is that it isn't suitable. And, generally, the reasons for that are because the benefits available from a DB scheme are far more valuable to consumers than those from flexible alternatives. DB schemes are essentially risk free to consumers. Scheme members' benefits are guaranteed, index linked and increasing for the remainder of their lives once they start taking an income from it.

In contrast, flexible personal pensions and SIPP's rely on investment growth. So any funds invested in a flexible alternative is subject to the volatilities of the investment markets. And growth is not only far from guaranteed, those investments are at risk of suffering losses. And, if there's a market crash or a sustained period of poor performance, then investments might not only lose spending power against inflation but have less value than when initially invested, giving less security to the pension holder in retirement.

Further there are other risks associated with drawdown pension products. For example the consumer needs to have the discipline to leave their funds untouched and only take out what they require, rather than to give in to temptation to access what might be very large sums available to them immediately. And if consumers yield to that temptation and take large sums from their pensions in the early years, then they face the very real prospect of withdrawing their funds too early and being worse off as a result.

Indeed the regulator has said in FG21/3 that many consumers see access to CETV sums as like a lottery win. And some consumers will see obtaining lump sums today as of more value than an income stream in the future, when that may not be the case. This is why the regulator introduced TVCs. Those offer individuals the opportunity to see at first hand the relevant worth of an income stream against a CETV figure. In Mr S' case the TVC indicated his DB benefits were worth over £209,000 more than his CETV. And I think most people would consider that a fairly large sum. But that was what Mr S was potentially giving up by transferring.

So, I don't think he's worse off because the transfer didn't go ahead. In saying that I can confirm I have seen Mr S' yearly entitlements from his DB Scheme, which he referred to as an annuity. But I think it's worth repeating that his yearly income would increase each and every year in line with the relevant indexation. Something that can't be guaranteed from an investment pension product or indeed from buying a conventional annuity. And I'm satisfied he hasn't suffered an actual financial loss here because he didn't transfer out of his DB scheme – he's retained those benefits.

That said I do understand that, TFC aside, if Mr S takes his regular income from the DB scheme then he will have to pay tax on that. But, he would also have had to pay tax on the 75% of his remaining CETV (other than the TFC) when he decided to draw down funds from

that. And that tax would continue to directly deplete his funds once invested, whereas, tax taken at source from his DB scheme doesn't affect his remaining pension entitlement going forward.

However, I do recognise Mr S' disappointment and frustration that he couldn't access his funds in the manner he believed would be most beneficial for him. For example by investing it in property or other ventures as he'd hoped. But I took that into account when I awarded compensation of £750 in my provisional decision. I also said that Abacus should refund Mr S' fee of £6,000 and add interest to that sum. And while recognising Mr S' strength of feeling, I'm satisfied I've awarded appropriate redress in the circumstances. I'll add that compensation payments aren't intended to penalise or punish the firm involved. Instead it is tangible redress for the distress and inconvenience the consumer, in this case Mr S, suffered.

My final decision

For the reasons given above I uphold this complaint. I require Abacus Money Management Ltd to:

- Refund Mr S the £6,000 advice fee plus interest at a gross rate of 8% simple (less tax if properly deductible) from the date he paid the fee to the date of settlement.
- Pay Mr S £750 for the distress and inconvenience caused by the unsuitable advice.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 12 July 2023.

Joe Scott
Ombudsman