DRN-4465017

The complaint

Mr D complained that he was given unsuitable advice to transfer his defined benefit (DB) British Steel Pension Scheme (BSPS), to a type of personal pension plan, in 2018.

Abacus Money Management Ltd is responsible for answering this complaint and so to keep things consistent, I'll refer mainly to "Abacus".

What happened

In March 2016, Mr D's employer announced that it would be examining options to restructure its business, including decoupling the BSPS from the company. The consultation with members referred to possible outcomes regarding their preserved benefits, which included transferring the scheme to the Pension Protection Fund (PPF), or a new defined benefit scheme (BSPS2). Alternatively, members were informed they could transfer their benefits to a personal pension arrangement.

In May 2017, the Pension Protection Fund (PPF) made the announcement that the terms of a Regulated Apportionment Arrangement (RAA) had been agreed. That announcement said that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr D's employer would be set up – the BSPS2.

In October 2017, members of the BSPS were being sent a "Time to Choose" letter which gave them the options to either stay in BSPS and move with it to the PPF, move to BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make their choices was 11 December 2017 (and was later extended to 22 December 2017).

Mr D was concerned about what the announcement by his employer meant for the security of his preserved benefits in the BSPS. He was unsure what to do and was referred to Abacus which is responsible for providing the pension advice. Information gathered about his circumstances and objectives at the time of the recommendation were broadly as follows:

- Mr D was 43 years old, married and had two dependent children.
- Mr and Mrs D owned a home with a £46,000 mortgage which had 10 years' left to run. Mr D earned around £41,000 in total, and Mrs D was in receipt of state benefits.
- The cash equivalent transfer value (CETV) of Mr D's BSPS was approximately £86,614. The normal retirement age (NRA) was 65.
- Mr D had since joined the new TATA defined contribution (DC) pension scheme as a consequence of the BSPS ceasing new contributions. Mr D had another DC pension, but this is relevant as it was very small.

Abacus set out its advice in a suitability report on 29 January 2018. In this it advised Mr D to transfer out of the BSPS and invest the funds in a type of personal pension arrangement. Abacus said this would allow Mr D to achieve his objectives. Mr D accepted this advice and so transferred out. In late 2021 Mr D complained to Abacus about its advice, saying he shouldn't have been advised to transfer out to a personal pension.

Mr D referred his complaint to our Service in June 2022. I'm very sorry the complaint has taken so long to reach this stage. One of our investigators looked into the complaint and said in August 2022 that it should be upheld. In response, Abacus asked for a number of extensions to think about the investigator's view. But ultimately it said it hadn't done anything wrong and was acting on the financial objectives Mr D had at the time. It also said that it didn't think he had actually lost any money however it did make an offer to settle the dispute which was rejected by Mr D. Abacus has also implied that any redress, if the complaint were to be upheld, should be calculated using the PPF rather than the BSPS2.

As it seems this complaint can't be resolved informally, it's therefore time for me to make a final decision.

I issued a provisional decision (PD) about this case in October 2023. In this PD, I basically agreed with our investigator that we should uphold the complaint. But I differed in view as regards the method which ought to be used to calculate the redress that might be due. I said the redress should be based on the assumption that Mr D would have moved into the PPF if he had been advised suitably.

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 also 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'). 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 Abacus'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.

I have further considered that the regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6 that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Abacus should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr D's best interests.

I've used all this information we have to consider whether transferring away from the BSPS to a personal pension was in Mr D's best interests. I have also carefully considered the final response letter from Abacus. I've carefully considered too, the various other responses made to the points contained within our investigator's view and my PD. Both Mr D and Abacus responded to the points I'd made in the PD.

Having done all this, I'm upholding Mr D's complaint.

Introductory issues

As I did in my PD of last month, I'd like to start by referring to the 'timeline' of events.

I explained that I didn't think the adviser had properly understood what was happening to the BSPS at the time of the advice. I say this because Abacus partially defends this complaint by saying the BSPS2, at the time of the advice, wasn't yet a scheme where there were enough details known about how it would operate. Abacus has also said that there was no information at the time about whether members of the BSPS who opted to join the new scheme (BSPS2) could retire early from that scheme.

However, these were misconceptions and I think they show that the adviser at the time didn't have a reasonable 'grip' on the changes that were being proposed. I accept this was a time of great change – and it was certainly causing anxiety amongst BSPS members – but by the time Abacus was contracted by Mr D to provide advice, there were many more details known about BSPS2 and it was clear it was going ahead. Members had already been sent a "Time to Choose" letter many weeks before Abacus's advice sessions with Mr D. And the rules of the BSPS2 had also emerged and were being widely discussed. I know, for example, that when Abacus was meeting with Mr D, other financial businesses were providing detailed quotes for clients about what BSPS2 looked like.

However, I've already described above how members of the BSPS were given until 22 December 2017 to decide whether or not to join the BSPS2. It's not clear whether Mr D ever made that choice - there's no evidence that he did. Perhaps understandably, he can't now remember if he ever filled out his "Time to Choose" form, but there's no documentation, which I've seen, showing he did make a choice. From experience, I know fellow members who were in very similar circumstances to Mr D had, by the end of 2017, opted to join BSPS2, if only as a precaution whilst they sought advice. But here, I've seen nothing to show Mr D wanted to opt into the BSPS2, in fact the opposite was true as he'd said he basically didn't like the thought of it.

So, we know that if no choice was ever made by the deadline then the member would eventually move from the BSPS to the PPF. This is because the 'old' scheme (BSPS) was no longer an option.

I don't think Mr D ever made an election to opt into the BSPS2 ahead of the deadline. I say this because the documentation I've got access to overwhelmingly refers to events in January 2018. And unfortunately, Mr D hasn't been able to present any further evidence about this following me issuing my PD last month.

I can see a Client Agreement was produced by Abacus on 15 January 2018 and signed by Mr D. A 'fact-find' was also produced and this is dated the same day, as is an attitude to risk (ATR) questionnaire. Further to these documents, the pension analysis report is dated 25

January 2018 and the recommendation (suitability) report is dated 29 January 2018. Everything else I've seen refers to dates in January 2018.

So, all this was several weeks after the 'hard' deadline of 22 December 2017 I've mentioned above and where members of the BSPS needed to make a choice. I therefore think the advice process was only conducted throughout January 2018 and beyond, by Abacus.

I should say that none of this really matters to the actual *suitability* of the advice – it was clearly unsuitable in many respects. Nevertheless, it does matter to the redress that is due for providing the unsuitable recommendation to transfer away from a DB scheme: any redress calculation should be measured against as if the member would have joined the PPF, rather than previously electing to join the BSPS2. So redress will be based on the PPF as this was his only other option as of January 2018.

Financial viability

Abacus referred in its transfer analysis and suitability report to 'critical yield' rates. The critical yield is essentially the average annual investment return that would be required on the transfer value - from the time of advice until retirement - to provide the same annuity benefits as the DB scheme. In this case, Abacus used the existing scheme (BSPS) for the critical yield comparisons, rather than the 'new' BSPS2, details of which had emerged, or the PPF which was by that time the only alternative Mr D had.

The critical yield comparison was a requirement from the regulator at the time when advising clients on DB transfers. It's also important to point out that the critical yield comparison is only one of a number of different metrics I've used to compare the different schemes. And in my view, these all point one way – that Mr D was probably going to receive lower pension benefits overall, as a result of transferring to a type of personal pension plan.

As our investigator explained, Abacus said that the critical yield required to match the benefits at the age of 65 in the BSPS, was 7.04% if Mr D took a pension without a tax-free lump sum. If taking a tax-free lump sum, the critical yield was 5.75%. However, for the reasons I've explained above, these weren't the most relevant critical yield figures to use because it doesn't seem Mr D could transfer to the BSPS2 and he certainly couldn't remain in the BSPS because it was closing. Abacus also didn't calculate any critical yield rates for an earlier retirement, at the age of 60, despite Abacus saying Mr D apparently having expressed a desire to retire early.

Given the circumstances, it was the PPF that was still the available option for Mr D and not the BSPS2. Measured against the PPF upon retiring at the age of 65, the critical yields came in as 5.29% (no tax-free cash taken on retirement) and 5.02% (with tax free cash) respectively.

However, as I'll explain more about later, retirement was still a very long way off for Mr D and so I very much doubt whether retiring at 60 was anything more than something he just aspired to, rather than being part of a real plan. He was only 43 years old and so had over 21 more years before retirement would come into focus, if using the NRA. Even if retiring early, at the age of 60, this was still over 16 years away. So, predicting things like whether an earlier retirement was feasible or whether or not he might take a lump-sum at retirement were quite obviously premature in his case. In my view, these predictions or assumptions from Abacus lacked credibility.

Nonetheless, Abacus didn't really explain the full details of the critical yield analysis in its suitability report. In my view, even though the adviser seems to have been under the misplaced view that comparisons with the BSPS were relevant, the suitability report still largely avoided any explanation of the 7.04% critical yield. Instead, the report focussed on what it described as the “hurdle rate”. This was a much lower yield and so it better fitted with a transfer-away narrative. But this was misleading as it related to a much inferior type of pension and so it made transferring look much more attractive, from a financial viability perspective.

But all this needed a careful explanation, not least because the BSPS was being closed and was no longer available. I also think the assertion the “hurdle yield” growth in Mr D’s case might be achievable was misleading as it wasn’t evidenced by any analysis showing how even this could realistically happen. In fact, I don’t think there was any reliable evidence at the time that achieving enough growth outside the DB scheme, to make transferring financially viable, was ever going to be achievable. I say this with the following in mind.

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.

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 only 4.6% per year for 21 years to retirement (age 65), which is below all the critical yield figures I’ve referred to above, including those for the PPF. Abacus says now that we shouldn’t use the discount rate as a comparison. But I disagree. Whilst there was no compulsion on Abacus at the time to show Mr D the discount rate, I think it provides a useful benchmark on what growth rate assumptions were reasonable at the time. Using Abacus’s retirement suggestion of 60, the discount rate was only 4.3%. I’ve also kept in mind that the regulator's upper projection rate at the time was 8%, the middle projection rate was 5%, and the lower projection rate was 2%. However, these figures had been in place for many years and they existed unchanged through a period of extraordinary low interest rates and bond yields. So, if anything, these assumptions were somewhat higher than the reality of the economic climate in early 2018.

Abacus simply couldn’t predict a retirement age so far in advance in this case, nor could it reasonably judge whether Mr D would be taking a lump-sum with a pension in over 21 years’ time. We know the BSPS was already closing and Mr D had missed the deadline to join the BSPS2. So, what was probably more relevant here was that the discount rate of 4.6% could have been considered alongside the critical yield for a retirement at 65 using the PPF, which was 5.29%. I think these comparisons would have been a cause for caution as would the regulator’s growth assumption as they implied Mr D might receive lower (not higher) retirement benefits if he transferred. That’s because the discount rate for this scenario was *below* the critical yield rate thus implying that from a starting point, there was no obvious evidence pointing to Mr D achieving better retirement benefits by transferring to a type of personal pension arrangement. The opposite appeared to be true.

Also, at the time Abacus assessed Mr D’s ATR as “cautious to realistic” or level 5/10. But in reality, Mr D had no previous experience of these types of investments. There was no evidence he possessed any such investments at the time. He’d also never invested personally in shares in the past, so he had no relevant experience to draw upon. I accept he’d joined the new TATA DC scheme which involved investing, but again I’ve seen nothing showing this was conducted under anything other than an ‘off the shelf’ investment strategy which required no direct investment decisions from Mr D himself. In any event, he’d only just joined this a few months before. I’ve also noted that although he had around £3,200 in savings, there's no evidence these funds were held in anything other than a cash deposit account.

In my view, the adviser used a pre-populated questionnaire to arrive at the ATR categorisation. However, they seemed to ignore the fact that Mr D was a 43-year-old man with no such investments or experience and with probably very little idea of what his far-off retirement might yet look like. I therefore don't think the adviser had enough information or evidence to recommend transferring away from a DB scheme based on a financial comparison basis. Growth assumptions close to the lower end of the regulator's projections and up to the discount rate were most relevant here in my view.

So, using everything I've set out above, I think growth assumptions of around 2-to-4½% were more realistic if looked at through the prism of January 2018. These were below the critical yield figures for the PPF. I therefore think this showed that achieving the critical yield(s) for the PPF, year-on-year, upon transferring out, was more unlikely than likely. It's also important to remember here that the effect of charges and fees associated with a personal pension such as the one being recommended to Mr D, would have further reduced the likely growth assumptions. In my view, there would be little point in transferring away from a type of DB scheme (or the PPF) to get financial benefits of only a similar value. But here, even this relatively 'low bar' wasn't being reached. In my view, as of 2018 there was little chance of Mr D's transferred funds growing by enough to make transferring a really worthwhile exercise over the long term. A recommendation to transfer should not have been made on this basis.

I've also noted that using the NRA of 65, Abacus's own transfer analysis said that even in order to purchase an annuity to provide benefits of equal value to the estimated benefits provided by the existing scheme, assuming *no* spouse's pension, *no* increases in payment and *no* guarantee at retirement, the estimated fund required at 65 was £158,940. No such amount was provided in respect of the PPF type benefits although I think I can safely say the cost could have been moderately lower. But to reiterate, the above figure is found in Abacus's own analysis. And because this figure is far above Mr D's CETV, it represents, in my view, a revealing window into the value of the guaranteed pension Mr D could be giving up by transferring away to a personal plan.

I therefore think it's fair to say that from a financial comparison perspective, Abacus's own figures, shown in its suitability report and transfer analysis documents, showed that transferring to a personal pension plan would mean Mr D would likely receive lower pension benefits in the longer term.

I've also considered some projections Abacus used to help show that if he transferred out to a personal plan, the funds could last Mr D well into retirement. However, I think most of these were based on growth projections using past performance. It's also fair to say these were not comparing like-with-like. What Abacus was showing Mr D were comparisons with plans which lacked the guarantees and benefits of a DB scheme.

Of course, according to Abacus, its recommendation that he should transfer out to a personal pension was not wholly based on the financial comparisons with his current scheme alone. Rather, Abacus said Mr D also had other reasons to transfer away, so I've thought about all the other considerations which might have meant a transfer was suitable for him, despite providing the overall lower benefits mentioned earlier.

I've considered these below.

<u>Other reasons to transfer</u>

Abacus recommended a transfer to a personal pension arrangement based on what it said were Mr D's wider objectives. It said that he could retire early and have access to more tax-free cash. It also promoted the flexibility of a personal arrangement and implied the death benefits were much better for Mr D. It also said Mr D would be able to control his pension and add value to it in future years.

So, I have used all the documents we still have from the advice sessions to summarise the rationale for the recommendation for him to transfer away. I have therefore considered all the issues in turn.

- *Retiring early / taking tax-free cash*

I've taken into account that Mr D approached Abacus for advice because of the uncertainties he faced with the BSPS.

However, I think it's important to focus for a moment here on Mr D's relatively young age by pension standards. The evidence I've seen here is that Mr D – understandably - had absolutely no firm plans for his retirement. With over 21 years still left to when he'd be actually contemplating retiring if using his NRA, there's simply no way that what he might possibly use the money for, should have been a major influence in him deciding to irreversibly move away from a DB scheme. Doing so involved an investment risk which I've showed above could mean lower overall financial benefits at retirement and which Mr D had no meaningful experience of.

So whilst I'm sure, like most people, Mr D probably wanted to stop working as early as possible, I think what he and the adviser discussed could only ever have been vague retirement aspirations on his part. In reality, there was no plan to retire early. It was simply far too early to speculate about this. Indeed, I've seen evidence that Mr D himself was sceptical that he'd be able to retire early.

I therefore think that everything that flowed from predicting Mr D's retirement was flawed. For example, there was no estimation from either party as to how much Mr D might need to live on each month when he retired; and as this was so far off I'm not surprised. Mr and Mrs D still had very significant parts of their life ahead and it's reasonable to assume they'd want to guide their children through school and possibly into tertiary education. They also had 10 years more of their mortgage to pay and I've noted Mrs D was in receipt of a disability related allowance. I think it's also reasonable to point out that Mr D could be said to be only in 'mid-career'. So, there were many years in which their personal, professional and financial circumstances would almost definitely change. The adviser should have seen this very obvious uncertainty and incorporated it into their advice. Likewise, as I've explained, I don't think the adviser could have possibly determined whether or not Mr D might access a lump-sum upon retirement or even how he would access his retirement benefits at all. I think the adviser should have noted a clear vulnerability here in advising someone still relatively young to withdraw from a guaranteed pension.

I think Abacus also promoted to Mr D that he could access more tax-free cash if he transferred to a personal pension plan. It said he'd be able to access 25% of his pension as a lump-sum and then use the remaining funds more flexibly and in a personal pension the lump-sum could be much higher. But this needed a careful explanation. It's usually the case that more tax-free cash can be accessed from a personal pension when compared against a DB scheme; this is because the values and benefits of the two schemes are calculated differently. But Abacus should have been telling Mr D at the time that extra tax-free lump sums being removed from a personal pension, potentially from the age of 55 in his case, also came with consequences in that the amount left for his later retirement years would obviously decrease.

- *Flexibility and control*

I also can't see that Mr D required flexibility in retirement in the way the adviser suggested. In any event, flexibility was poorly defined by Abacus. I therefore think this was no more than a 'stock' objective used to help justify the recommendation to transfer out to a personal plan. For example, I've seen nothing that showed anyone could have known Mr D required changing how his retirement benefits ought to be paid. I don't think this could have been predicted whilst still so far away from retirement age. He already had a new and more flexible DC pension with his existing job as a consequence of the old BSPS scheme being closed to new contributions. This DC pension was being significantly contributed towards by both Mr D and his employer and still had up to 21 years left to run (over 16 years if he did eventually retire early). So, this secondary pension would have afforded Mr D any flexibility he might have needed in the years ahead.

This means I've seen nothing explaining why Mr D wouldn't want to continue membership of a DB scheme and to use that scheme in exactly the way it was originally intended. Indeed, I think that by retirement, whenever it eventually came, Mr D could have been in a very agreeable position. On one hand he'd have a small but meaningful existing deferred DB scheme. This would contain all the guarantees and benefits that such schemes normally bring which tend to include a promise to pay a known pension for life. Significant indexation guarantees also existed within the PPF. On the other hand, he'd have also built up a substantial DC scheme over a long period of time and it's not unreasonable to say he'd have amassed a substantial six-figure sum in this by retirement. So, if Mr D ever found he needed so-called flexibility, then he'd be able to use the latter, rather than transferring away from the former.

I've also seen no evidence that Mr D had either the capacity or desire to exercise control over his funds. With his DB scheme, Mr D was being offered the opportunity to move to the PPF. It's true there were some differences in this scheme when compared to the original BSPS, but it remained a DB-type scheme nonetheless and was run for him by trustees. Mr D himself had no experience of these types of other DC 'money market' investments and I think he would have found the complexity, scale and responsibility of managing over £86,000 of transferred funds to be onerous in the years ahead. What I've seen tends to show Mr D would have required ongoing financial advice and support, all of which would cost him money which his DB scheme didn't require from him.

Abacus itself set out the estimated pension he'd get under the BSPS. I'm not going to use up time explaining what these figures were because retirement was still so far away in the future as to make these estimates irrelevant. In any event, Abacus didn't calculate what overall income in retirement Mr D was targeting in 'todays' money.

However, I don't think there's anything showing Mr D's eventual and overall pension entitlements wouldn't have met his anticipated requirements, without any need to transfer from a DB scheme. I don't think Abacus adequately explained these things to Mr D as its advice simply discounted him transferring to the PPF in order to obtain flexibility which was poorly defined and which he didn't need.

I therefore think Mr D's circumstances here were much more aligned to him moving to the PPF and retiring from that when he felt he was ready to do so.

- *Death benefits*

Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. The PPF contained certain benefits payable to a spouse and children if Mr D died. Mr D was married and had children.

I therefore think the value of these benefits were most likely underplayed because the spouse's pension provided by the PPF would have been useful to a future spouse and / or children if he predeceased them. I don't think Abacus made the value of this benefit clear enough. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was.

I also think the adviser probably told Mr D that he'd be able to pass on the value of a personal pension, potentially tax-free, to anyone he nominated. So, the lump sum death benefits on offer through a personal pension were made to look like an attractive feature to Mr D.

But whilst I appreciate death benefits are important to consumers, and Mr D might have thought it was a good idea to transfer the BSPS to a personal pension because of this, the priority here was to advise him about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think Abacus explored to what extent Mr D was prepared to accept a different retirement income in exchange for different death benefits.

Mr D was only 43 and in good health. An obvious drawback with a personal plan's death benefits is that the amount left to pass on – to anyone – may be substantially reduced as the pensioner starts to withdraw his or her retirement income. To this end, if Mr D had lived a long life there could be nothing left at all in his personal pension plan.

Although I've questioned the ability to forecast an early retirement whilst still so young, there's no real doubt that retiring at 60 was at least mentioned. The adviser should have therefore additionally known that a healthy male retiring at 60 would likely have many years ahead in which he would be drawing down his pension funds thus leaving very little left to pass on to someone.

I see life insurance was probably discussed as it does look like he was given some quotes. Some of these were 'whole life' quotes and may well have been viewed by Mr D as expensive. But at 43 years old, a modest 'term' life insurance policy would have been a reasonably affordable product if Mr D really did want to leave a lump sum legacy, rather than an annual pension, for a specific relative or someone else. But more so, it doesn't appear that Abacus took into account the fact that Mr D could have nominated a beneficiary of any funds remaining in his other (TATA) DC scheme. So, to this end, Mr D already had plenty of options ensuring part of his pension wouldn't 'die with him'.

Overall, in this case I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr D. I think this objective, listed as it was in the suitability report, was no more than a generic comment and not meaningful to Mr D's situation.

Concerns over financial stability of the DB scheme

It's clear that Mr D, like many employees of his company, was concerned about his pension. His employer had recently made the announcement about its plans for the scheme and Abacus said he lacked trust in the company. He'd heard negative things about the PPF and Abacus said he could have more control over his pension fund.

So, it's quite possible that Mr D was also leaning towards the decision to transfer because of the concerns he had about his employer and a negative perception of the PPF. However, it was Abacus's obligation to give Mr D an objective picture and recommend what was in his best interests. I think that Abacus should have reassured Mr D that the scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr D through the PPF would have still probably provided a significant minority of the income he would have needed at retirement, and he was still unlikely to be able to exceed this by transferring out, given his ATR and the effect of pension charges and fees. And although the increases in payment in the PPF were lower, the income was still guaranteed and was not subject to any investment risk. So, I don't think that these concerns should have led to Abacus's recommendation to Mr D to transfer out altogether.

Suitability of investments

Abacus recommended that Mr D invest his funds in a personal pension. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr D and I don't think he would've insisted on transferring to a new personal pension if clear advice had been given to him, it follows that I don't need to consider the suitability of the investment recommendation. This is because he should have been advised to remain in the DB scheme and migrate to the PPF. This means the investment in the new funds wouldn't have arisen if suitable advice had been given.

Summary

I don't think the advice given to Mr D was suitable.

His CETV may have been modest by most standards, but he was still giving up a meaningful guaranteed, risk-free and increasing income within the PPF. By transferring to a personal pension, the evidence shows Mr D was likely to obtain lower retirement benefits. And I don't think there were any other particular reasons which would justify the transfer and outweigh this. I think Abacus ought to have advised him against transferring out of his DB scheme for this reason, particularly as it could mean he'd be worse off in retirement.

So, I don't think it was in Mr D's best interests for him to transfer his DB scheme to a personal pension when he had the opportunity of opting into the PPF.

Mr D still had many more years before he intended to retire. Much of the rationale used to justify the transfer-out recommendation was irrelevant to Mr D's circumstances. The adviser was being paid for this advice, so their job wasn't to simply transact what Mr D thought was a good idea. Mr D had no experience of these matters so the adviser's job here was to use their experience and training to see that Mr D's personal circumstances were considered and to act in his interests.

I have considered, given the circumstances of the time, whether Mr D would have transferred to a personal pension in any event. I accept that Abacus disclosed some of the risks of transferring to Mr D, and provided him with a certain amount of information. But ultimately it advised Mr D to transfer out, and I think Mr D relied on that advice.

I'm not persuaded that Mr D would have insisted on transferring out of the DB scheme, against Abacus's advice. I say this because Mr D was an inexperienced investor and this pension accounted for most of his retirement provision at the time. So, if Abacus had provided him with clear advice against transferring, explaining why it wasn't in his best interests, I think he would have accepted that advice.

In light of the above, I think Abacus should compensate Mr D for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Putting things right

A fair and reasonable outcome would be for the business to put Mr D, as far as possible, into the position he would now be in but for Abacus's unsuitable advice. I consider Mr D would have most likely opted to join the PPF, rather than transfer to the personal pension if he'd been given suitable advice and compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

Mr D hasn't yet retired and Abacus should use the benefits offered by the PPF for comparison purposes.

Abacus 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.

Abacus should use the FCA's BSPS-specific redress calculator to calculate the redress. A copy of the BSPS calculator output should be sent to Mr D and our Service upon completion of the calculation.

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 D'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, Abacus should:

- calculate and offer Mr D redress as a cash lump sum payment,
- explain to Mr D before starting the redress calculation that:
    - the redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
    - a straightforward way to invest the redress prudently is to use it to augment the DC pension
- offer to calculate how much of any redress Mr D receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr D accepts Abacus's offer to calculate how much of the redress could be augmented, request the necessary information and not charge Mr D for the calculation, even if he ultimately decides not to have any of the redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr D's end of year tax position.

Redress paid to Mr D as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, Abacus 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 D'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.

To enable Abacus to use the most recent version of the BSPS-specific calculator to calculate redress, it would be useful if Mr D could give authority to his current IFA to provide details of his pension plan and ongoing fees and charges and confirm that Abacus can request these directly.

Our investigator recommended that Abacus should pay Mr D for the distress and inconvenience caused by the unsuitable advice. I have considered the impact this would likely have had on Mr D in his particular circumstances. This pension at the time represented most of his retirement provision. In his situation I think the thought of losing material benefits would have impacted upon Mr D. So I agree the recommended payment of £300 for distress and inconvenience. Abacus should pay Mr D this amount *in addition* to the redress I've set out above.

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

<u>Determination and money award</u>: I am upholding this complaint and I now direct Abacus Money Management Ltd to pay Mr D the compensation amount as set out in the steps above, up to a maximum of £170,000.

<u>Recommendation:</u> If the compensation amount exceeds £170,000, I also recommend that Abacus Money Management Ltd pays Mr D the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr D.

If Mr D accepts my final decision, the money award becomes binding on Abacus Money Management Ltd.

My recommendation would not be binding. Further, it's unlikely that Mr D can accept my decision and go to court to ask for the balance. Mr D 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 D to accept or reject my decision before 17 December 2023.

Michael Campbell
Ombudsman