

The complaint

Mrs T complains that Ascot Lloyd Limited gave her unsuitable advice to transfer her deferred defined benefit occupational pension scheme ('OPS') to a self-invested personal pension ('SIPP'). She says that she will now be worse off in retirement by following Ascot Lloyd Limited's recommendation.

What happened

Mrs T had an OPS from a previous term of employment. In August 2017, along with her husband – Mr T – she met with an adviser from French & Associate Limited ('FAL') for advice about her OPS, as well as Mr T's two OPSs. FAL later dissolved, but it transferred its business to Ascot Lloyd. Ascot Lloyd is now the respondent business for this complaint. As it was FAL that Mrs T dealt with I think it will be clearer for Mrs T if I refer to FAL where considering the actions of that firm at the time.

FAL established the following circumstances for Mrs T from its meeting in August 2017:

- Mrs T was 57 years old.
- Mr and Mrs T had no children or financial dependants.
- They had a combined income around £100k a year.
- They had a mortgage around £400k (£300k was interest only with £100k as repayment). The remaining term was 11 years.
- Their monthly outgoings were estimated as £3-4k.
- Other joint notable assets included: jewellery (around £100k), furniture & antiques (around £250k).
- They had around £80k in a current account and had around £100k in savings & investments.
- They owned three other residential properties worth £560k with £300k in outstanding mortgages.
- Mr and Mrs T anticipated needing around £200k - £300k for an extension to their residence.
- FAL assessed Mrs T as having a low to medium attitude to investment risk.

The notes from the meeting documents that Mr T was knowledgeable about finance having done a master's in international finance. It noted that he ran a number of companies as well as having three properties being let. It noted that Mr T had said he had a clear idea about investing the money himself and wanted FAL to authorise the transfer to a self-invested personal pension ('SIPP'). It documented that Mr T wished to take tax-free cash once he reached age 55 to use for home improvements. FAL made few notes regarding Mrs T's specific objectives.

On 15 February 2018 FAL sent a suitability report to both Mr T and Mrs T. This decision will be limited to the advice that FAL gave to Mrs T, as our service has a separate complaint about the advice given to Mr T.

FAL recorded Mr and Mrs T's objectives together as being:

- To review her OPS.
- Wanting to arrange transfer to a SIPP.
- Wanting to draw benefits in a flexible way in the future.
- Wanting the recommendation to be cost effective and flexible.
- Wanting residual funds available to family as death benefits.
- Considering taking pension benefits early (particularly tax-free cash) to help pay for work on the house.

Mrs T's OPS had a cash equivalent transfer value ('CETV') around £57,000 that was guaranteed until 22 April 2018. The scheme had a normal retirement age of 65 and FAL estimated that the likely benefits the scheme would provide at that age would be a pension of £3,270 a year (or a tax free lump sum of £15,911 plus an annual pension of £2,386). This pension would receive annual increases during retirement and would provide a spouse's pension of half of the annual pension a year.

FAL undertook transfer value analysis for Mrs T's OPS. It calculated the critical yield (the annual investment returns needed to provide equivalent benefits to her OPS in a personal pension) was 14.82%. Although it reduced to 13% a year to replicate the tax free lump sum and reduced annual income.

FAL's suitability report explained the benefits of the OPS, which I summarise as:

- It wasn't subject to specific charges for running the plan.
- Transfer value analysis indicated that the amount needed to provide the same benefits through a personal pension is higher than the CETV.
- There were no investment or annuity rate risks.
- The OPS will pay a spouse benefit on Mrs T's death.
- The future income is known in present terms.
- Part of the pension will increase to offset inflation.
- The critical yield required to match the benefits was higher than Mrs T's risk tolerance.

But it explained the following downsides of the OPS:

- In the event of Mrs T's death there would be no lump sum death benefit.
- Mrs T would be unable to invest the funds to potentially have a larger fund and higher income in retirement.
- She would not have the flexibility about how much income she could draw.
- She would not receive financial advice without paying another adviser.

FAL gave Mrs T the same recommendation it gave to Mr T. Which was to transfer her OPS to a SIPP, and invest the fund via a Discretionary Fund Manager ('DFM').

Mrs T accepted FAL's recommendation and transferred her OPS to a SIPP. The SIPP was set up by 22 March 2018 and the CETV for her OPS transferred to it by 9 April 2018.

On 12 February 2024 Mr T submitted a referral for compensation to the Financial Services Compensation Scheme ('FSCS') for both he and Mrs T because he considered that they'd been given unsuitable advice by FAL to transfer their defined benefits OPSs. He explains that they had been unable to complain to FAL as it had ceased to exist.

On 18 April 2024 the FSCS responded to explain that the complaints about FAL should be sent to Ascot Lloyd. And on 25 April 2024 Mr T sent his complaint to Ascot Lloyd about the advice it had given to him and to Mrs T.

Our investigator considered Mrs T's complaint but was unable to resolve it informally. So this case was referred for an ombudsman's decision. I issued both parties a provisional decision to explain why I thought that Mrs T's complaint had been made within the timescales that allowed us to consider what happened. And I gave the reasons why I thought her complaint should be upheld and what Ascot Lloyd should do to put things right.

Mrs T accepted my provisional decision. Ascot Lloyd did not, but offered no further arguments or evidence for me to consider.

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 have received no additional evidence, comments or arguments since giving my provisional decision. I have therefore considered the same evidence and arguments again and have come to the same decision that I provisionally explained. I will now set out again why I am able to consider this complaint and why I am upholding it.

Is our service able to help resolve Mrs T's complaint?

Our service gets its authority, or jurisdiction, to be able to help resolve disputes between financial services firms and its customers from the rules the Financial Conduct Authority ('FCA') publishes in its Handbook in the dispute resolution section – referred to as DISP. DISP 2 is the part that specifically sets out our jurisdiction.

The jurisdiction that we have to resolve disputes has certain limitations. For example, we can only consider complaints if they are made within the time limits set out in our rules under DISP 2.8.

DISP 2.8.2R says that we can't consider a complaint if the complainant refers it:

More than:

- (a) Six years after the event complained about; or (if later)
- (b) Three years from the date the complainant became aware (or ought reasonably to have become aware) that they had cause for complaint;

unless the complainant referred the complaint to the respondent or to the ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received.

These rules apply unless the failure to comply with time limits was: as a result of exceptional circumstances; or because the respondent consents to us considering it (which Ascot Lloyd has not).

This is relevant in this case because Ascot Lloyd received Mrs T's complaint on 25 April 2024. Which was more than six years after FAL's recommendation, which was dated 15 February 2018, and the transfer, which completed by 9 April 2024. But I will explain why I think that DISP 2.8.2R still gives us the jurisdiction to help with this complaint.

For simplicity I don't intend to give specific consideration to part (b) here as I don't think it is relevant. That's because the rules allow me to decide whether the failure to comply with time limits was as a result of exceptional circumstances. And I think that was the case here.

Mrs T's complaint about FAL's advice was referred to the FSCS (on her behalf) within six years of FAL's advice. I am therefore persuaded that it was Mrs T's intention to make her complaint to FAL in the six year time limit. Mrs T has shown us evidence why they thought they were unable to complain to FAL, showing us information about FAL's dissolution on Companies House. I don't think it was unreasonable for a lay person to consider that they were unable to directly complain to a company having found out it no longer existed as an entity.

I note that Mr and Mrs T's agreement with FAL included ongoing financial advice. So I asked Ascot Lloyd whether it had any evidence that it had made any contact with them to inform them that it was, for example, taking over the servicing of Mr T's policy. But it cannot provide any evidence of that. I am therefore persuaded that Mr or Mrs T could not reasonably have known that Ascot Lloyd would take responsibility for the activities of the now dissolved FAL.

I am therefore satisfied that Mrs T tried to raise her complaint with FAL in the time limits and, being unable to, she referred it instead to the FSCS within time. But for FAL's dissolution, Mrs T would instead have been able to make this complaint in time. I am similarly satisfied that Mrs T acted promptly in response to the FSCS's information that she should direct her complaint to Ascot Lloyd. Because of this, I am of the opinion that this is an exceptional circumstance that prevented this complaint being made within the six years that she had to refer her complaint. So I am satisfied that our service has the jurisdiction to consider this complaint.

Was FAL's recommendation to transfer Mrs T's OPS suitable?

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The applicable rules, regulations and requirements

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of FAL'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 defined benefit pension transfer.

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

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6G that the starting assumption for a transfer from a defined benefit scheme is that it is unsuitable. So,

FAL should have only recommended a transfer if it could clearly demonstrate, on contemporary evidence, that the transfer was in Mrs T's best interests. And having looked at all the evidence available, I'm not satisfied it was in her best interests.

Financial viability

FAL carried out a transfer value analysis report (as required by the regulator) for the OPS showing how much Mrs T's pension fund would need to grow by each year in order to provide the same benefits as that scheme would provide (referred to above as the critical yield).

As I set out above the critical yield was 14.82% (or 13% to replicate the tax-free cash).

For comparison, the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

I've taken this into account along with Mrs T's low to medium attitude to risk and also the term to retirement. There would be little point in Mrs T giving up the guarantees available to her through this OPS only to achieve, at best, the same level of benefits in a SIPP. But, given the above critical yields, I think Mrs T was likely to receive benefits of a substantially lower overall value than was already available from the OPS, as a result of investing in line with that attitude to risk.

I've considered what FAL told Mrs T about this. Its suitability report was, I think, misleading. I'll explain why that was.

When providing the critical yield figures initially in the report, FAL commented that the *"growth rates are not realistic taking into account your attitude to investment risk and term involved"*. Which I agree was correct.

But I also think an illustration of FAL's misleading message was in its reference, later in the suitability report, to illustrative returns for the transferred pension. FAL's recommendation regarding Mrs T's OPS included the following illustration:

The projected benefits are based on the stated assumptions to age 65 are as follows:

	Low Growth	Mid Growth	High Growth
Full Annuity	£ 1,670	£ 3,460	£ 6,900
OR			
Pension Commencement Lump Sum	£ 7,730	£ 13,200	£ 22,100
Plus Residual Annuity	£ 1,250	£ 2,600	£ 5,170

I can see that illustration was taken from the SIPP providers 'key facts and illustration' document. And FAL followed this in the suitability report with this commentary:

"You will note that the amounts at the low growth rates are inferior to those projected from the scheme, however at the high growth rates the projected benefits following the transfer are better."

This was misleading and contradicted the earlier critical yield and pension analysis. Having looked beyond the suitability report it becomes clear that this illustration is not providing an annuity that in any way reflected the OPS benefits. It was for a non-escalating annuity with

no spouse benefit. It gave an unfair impression that medium or high returns would improve on the benefits. Which, on an actual like for like comparison, was not true. I think it undermined any earlier commentary about the impact of likely rates of return. And nowhere else in the recommendation did FAL provide a clear comparison of how much lower a similar type of annuity may end up being based on low, medium or high returns.

I can see that FAL chose to refer to the recommended DFM's historic investment performance from January 2003 to February 2017. Which it said was 8.75% before charges. But, as FAL knew, past performance is no guarantee for future performance. And it ought also to have known that the industry projection rates had been revised down over the period since 2003 when it was considered that reasonable expectations for low, medium and high rates of return were 5%, 7%, 9% respectively. So I consider the regulator's standard projections to be more realistic in this regard in the long term rather than projecting historic returns forward, particularly over such a long period of time.

Overall I think that a transfer out of Mrs T's OPS was likely to provide her with lower retirement benefits. So FAL's analysis didn't make these transfers in Mrs T's best interests. Of course financial viability isn't the only consideration when giving transfer advice. There might be other considerations, or objectives that Mrs T had, which meant the transfers were suitable, despite providing overall lower benefits. I've considered this below.

Flexibility and income needs

I don't think Mrs T genuinely required flexibility in retirement. This is because based on the evidence I've seen, I don't think she had a genuine need to access her tax-free cash earlier than the normal scheme retirement age and leave her funds invested until a later date. I say this because Mr and Mrs T had other assets that could be used before sacrificing the guaranteed retirement income this OPS offered.

FAL understood that Mr and Mrs T would like to access tax-free cash from their pensions to use on home improvements. But that doesn't mean that they needed to do that. FAL documented that they expected to need between £200,000 to £300,000 for the home improvement. This was a lot to raise and I accept that they did not immediately have access to that amount in liquid assets. But the details that FAL obtained in its fact-find indicated that Mr and Mrs T likely had other means to have funded that without giving up the only retirement plans they had. Mrs T's OPS CETV would only contribute about £14,250 of tax free cash. Whilst that would have helped towards the home improvement costs, it didn't nearly cover it. Even adding in the tax-free cash that Mr T could have accessed by transferring his OPSs to a SIPP they would still have had to raise the bulk of the costs by other means. Those alternatives should have been explored by FAL in more detail. But were not.

I also can't see evidence that Mrs T had a strong need for variable income throughout her retirement. This is because FAL chose to give advice on the transfer without ascertaining how Mrs T would want to take income in retirement. Or, more importantly, what pension she could expect to receive if she transferred and took all of her tax-free cash so early. FAL didn't establish when Mrs T planned to stop work and what she expected her income needs in retirement to be.

What I can say is that, at some point in the future Mrs T was likely to stop work and then be in need of her pension to help fund her retirement. At the point of FAL's advice, they didn't identify that Mrs T had any other available pensions. Whilst she potentially had more working years to make further pension contributions, her OPS provided her only guaranteed retirement income other than her state pension. And the most valuable way for these to contribute to her income needs in retirement (which is what they were primarily set up to do),

without any compelling reason for flexible income, was to leave them and take the deferred benefits when required.

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. But I don't think that was a particularly important consideration here. Mrs T's OPS only represented a small part of the couple's overall wealth. Mr and Mrs T had no children and no other financial dependents that they really needed to leave any financial legacy to. And FAL did not demonstrate that Mr T's financial security in retirement was dependant on any death benefits that any residual fund from Mrs T's SIPP might provide should he survive her.

FAL ought to have been clearer that the alternative way that death benefits would be available via a defined contribution pension did not provide any compelling argument to give up the benefits in her OPS.

Overall, I don't think different death benefits available through a transfer to a SIPP justified the likely decrease of retirement benefits for Mrs T.

Control over her pension fund

Whilst I note that Mr T may have had a desire for control over his pension fund, I am not persuaded that was Mrs T's express intention. I've seen no evidence that she was an experienced investor. And FAL failed to explain the longer term impact of taking her tax-free cash so early.

Whilst Mrs T's OPS may well have seemed like a modest plan to this couple at the time of the advice, it would have provided a valuable addition to her state pension once she was no longer working. The value of this was not made clear enough to Mrs T. And FAL failed to demonstrate the impact of replacing that lost income later in life.

Had FAL been clear to Mrs T on these points, I am not persuaded that she'd have disregarded a clear explanation about being worse off in retirement.

Summary

FAL made the flexibility, control and potential for higher death benefits on offer through a SIPP sound like attractive features to Mrs T, who (like Mr T) was likely already thinking along those lines. But FAL wasn't there to just transact what Mrs T might have thought was a good idea prior to seeking professional financial advice. The adviser's role was to really understand what was in Mrs T's best interest for her pension planning.

Ultimately, I don't think the advice given to Mrs T was suitable. She was giving up a guaranteed, risk-free and increasing income. By transferring, she was very likely to obtain lower retirement benefits and, in my view, there were no other particular reasons which would justify a transfer and outweigh this.

Of course, I have to consider whether Mrs T would've gone ahead anyway, against FAL's advice.

I've considered this carefully, but I'm not persuaded that Mrs T would've insisted on transferring against FAL's advice. I say this because Mrs T was an inexperienced investor with a low to medium attitude to investment risk. I understand that in terms of the couple's overall wealth at that time this pension may not have seemed a significant amount, but this

pension accounted for the majority of Mrs T's specific retirement provision. So, if FAL had provided her with clear advice against transferring out of the DB scheme, explaining why it wasn't in her best interests to use this pension in that way, I think she would've accepted that advice.

I'm not persuaded that Mr and Mrs T's need for the tax free cash was so great that she would've insisted on the transfer knowing that a professional adviser, whose expertise they had sought out and was paying for, didn't think it was suitable for her or in her best interests. If FAL had explained that Mr and Mrs T could meet their objectives without risking this guaranteed pension, I think that would've carried significant weight. So, I don't think Mrs T would have insisted on transferring.

In light of the above, I think FAL should compensate Mrs T for the unsuitable advice, in line with the regulator's rules for calculating redress for non-compliant pension transfer advice.

Putting things right

A fair and reasonable outcome would be for Ascot Lloyd to put Mrs T, as far as possible, into the position she would now be in but for the unsuitable advice. I consider Mrs T would have most likely remained in her OPS. I can see that transferring enabled her to fully encash her pension straight away. But, had more suitable advice been given, I am not persuaded she would have done this or have needed to access her pension before the scheme's normal retirement age.

This calculation should be carried out using the most recent financial assumptions in line with PS22/13 and DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mrs T's acceptance of the decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, Ascot Lloyd should:

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

Redress paid directly to Mrs T as a cash lump sum in respect of a future loss includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4.3.31G(3), Ascot Lloyd may make a notional deduction to allow for income tax that would otherwise have been paid. Mrs T's likely income tax rate in retirement is presumed to be 20%. In line with DISP App 4.3.31G(1) this notional reduction may not be applied to any element of lost tax-free cash.

My final decision

Where I uphold a complaint, I can award fair compensation of up to £160,000, 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 £160,000, I may recommend that the business pays the balance.

Determination and money award: I uphold this complaint and require Ascot Lloyd Limited trading as Ascot Lloyd to pay Mrs T the compensation amount as set out in the steps above, up to a maximum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Ascot Lloyd Limited trading as Ascot Lloyd pays Mrs T the balance.

If Mrs T accepts this decision, the money award becomes binding on Ascot Lloyd Limited trading as Ascot Lloyd.

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

Ascot Lloyd Limited must pay the compensation within 28 days of the date on which we tell it Mrs T accepts my final decision. If it pays later than this it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 25 September 2025.

Gary Lane
Ombudsman