

The complaint

Mr T complains that Ascot Lloyd Limited trading as Ascot Lloyd gave him unsuitable advice to transfer the deferred benefits, he held in two defined benefit occupational pension schemes, to a self-invested personal pension ('SIPP'). He says that it will cause him to have lower pension benefits in retirement.

What happened

Mr T had two occupational pension schemes ('OPS') that I will refer to as follows:

OPS1 – for a term of employment he'd left in 1996.

OPS2 – for a term of employment he'd left in 1985.

In August 2017 Mr T, along with his wife – Mrs T – met with an adviser from French & Associate Limited ('FAL') for advice about these OPSs and an OPS that Mrs T held. 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 Mr T dealt with I think it will be clearer for Mr T if I refer to FAL where considering the actions of that firm at the time.

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

- Mr T was 54 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).
- Mr T and his wife 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 extension to their residence.
- FAL assessed Mr T as having a 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.

On 15 February 2018 FAL sent a suitability report to both Mr T and his wife, Mrs T, who also had a deferred benefit OPS. FAL did not have an up to date cash equivalent transfer value

('CETV') for OPS2 having earlier obtained one from the administrator. Obtaining a further CETV from OPS2 at that time would incur an extra cost, so the advice to Mr T in this report was limited to what FAL recommended that he do with OPS1. This decision will be limited to the advice that FAL gave to Mr T, as our service has a separate complaint about the advice given to Mrs T.

FAL recorded Mr T's objectives as being:

- To review OPS1.
- 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.

OPS1 had a CETV of £173,250 that was guaranteed until 12 March 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 £10,739 a year (or a tax free lump sum of £52,248 plus an annual pension of £7,837). 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 OPS1. It calculated the critical yield (the annual investment returns needed to provide equivalent benefits to OPS1 in a personal pension) was 11.68%. Although it reduced to 9.79% a year to replicate the tax free lump sum and reduced annual income.

FAL's suitability report explained the benefit of the guaranteed benefits in OPS1, which I summarise as:

- Mr T wasn't subject to specific charges for OPS1.
- 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.
- OPS1 will pay a spouse benefit on his 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 Mr T's risk tolerance.

But it explained the following downsides of OPS1:

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

FAL recommended that Mr T transfer OPS1 to a SIPP, and that the fund was invested via a Discretionary Fund Manager ('DFM').

Mr T accepted FAL's recommendation and a SIPP was opened on 7 March 2018. On 18 May 2018, a transfer of £182,621, from OPS1, was completed.

On June 2018 FAL wrote to Mr T to remind him that he was entitled to receive a new CETV

from OPS2 without charge at that time. And it obtained that for him. OPS2 offered a CETV of £43,405. FAL estimated that it would provide Mr T with a pension at age 60 around £1,630 a year (or a tax-free lump sum of £7,915 and a reduced annual income of £1,187). It calculated that the critical yield for OPS2 was 13.05%. Although it reduced to 8.39% a year to replicate the tax free lump sum and reduced annual income.

On 24 July 2018 FAL gave Mr T a new recommendation regarding OPS2. This report was very similar to the first recommendation and it advised Mr T to transfer OPS2 for exactly the same reasons it gave to transfer OPS1.

Mr T accepted the recommendation and OPS2 was transferred to his existing SIPP by 17 September 2018.

By January 2019 Mr T instructed FAL to move the funds from the DFM and back into cash in his SIPP as he was concerned about market volatility. In July 2019 Mr T let FAL know that he intended to manage his investments himself.

On 12 February 2024 Mr T submitted a referral for compensation to the Financial Services Compensation Scheme ('FSCS') because he considered that he had been given unsuitable advice by FAL to transfer OPS1 and OPS2. He explains that he had been unable to complain to FAL as it had ceased to exist.

On 18 April 2024 the FSCS responded to explain that Mr T's complaint about FAL should be sent to Ascot Lloyd. And on 25 April 2024 Mr T sent his complaint to Ascot Lloyd.

Our investigator considered Mr 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 Mr T's complaint had been made within the timescales that allowed us to consider what happened. And I gave the reasons why I thought his complaint should be upheld and what Ascot Lloyd should do to put things right.

Mr 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 Mr 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 Mr T's complaint on 25 April 2024. This was less than six years after FAL's recommendation regarding OPS2, so our service has jurisdiction to consider that recommendation under part (a) above. But the recommendation regarding OPS1 was dated 15 February 2018. Which means that Ascot Lloyd received Mr T's complaint more than six years after that dated advice, and after the SIPP had been set up and the transfer requested. So I need to consider whether DISP 2.8.2R gives us jurisdiction to consider the earlier advice too. And I will explain why I think that it does.

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.

Mr T referred his complaint about FAL's advice to the FSCS within six years of the advice. I am therefore persuaded that it was Mr T's intention to make his complaint to FAL in the six year time limit. Mr T has shown us evidence that Mr T thought he was unable to complain to FAL, showing us the information he found about the company from Companies house. I don't think it was unreasonable for a lay person to consider that he was unable to directly complain to a company that he had found out no longer existed as an entity.

I note that his agreement with FAL included ongoing financial advice. So I asked Ascot Lloyd whether it had any evidence that it had made any contact with Mr T to inform him that it was, for example, taking over the servicing of his policy. But it cannot provide any evidence of that. I am therefore persuaded that Mr 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 Mr T tried to raise his complaint with FAL in the time limits and, being unable to, he referred it instead to the FSCS within time. But for FAL's dissolution, Mr T would instead have been able to make his complaint in time. I am similarly satisfied that he acted promptly in response to the FSCS's information that he should direct his complaint to Ascot Lloyd. Because of this, I am of the opinion that this is an exceptional circumstance that prevented his complaint being made within the six years that he had to refer his complaint. So I am satisfied that our service has the jurisdiction to consider both the recommendations that Mr T has complained about.

Was FAL's recommendation to transfer OPS1 and OPS2 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.

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 considered a transfer if it could clearly demonstrate, on contemporary evidence, that the transfer was in Mr T's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Financial viability

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

As I set out above the critical yield for OPS1 was 11.68% (or 9.79% to replicate the tax-free cash) and was 13.05% for OPS2 (or 8.39% 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 Mr T's medium attitude to risk and also the term to retirement. There would be little point in Mr T giving up the guarantees available to him through his OPSs only to achieve, at best, the same level of benefits in a SIPP. But, given the above critical yields, I think Mr T was likely to receive benefits of a substantially lower overall value than was already available from OPS1 and OPS2, as a result of investing in line with that attitude to risk.

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

For OPS1 FAL said:

“The critical yield figure for retirement at 65 is a challenging 11.68% per annum if all benefits are taken as income and a more achievable 9.79% if taken as a lump sum and lower income...The 9.79% in our opinion is on the high side, but taking into account your attitude to investment risk and the term involved, we would not be averse to the transfer.”

FAL’s later suitability report for OPS2 made a similarly worded statement about the critical yields for that scheme.

I am not persuaded that these statements were fair or reasonable. FAL was far from clear that these returns were in excess of the highest standard industry projection. And, for an investor with a medium attitude to risk, were considerably above the level that it was reasonable to lead Mr T to believe he could reasonably expect.

I find the suitability report to lack clarity on this issue. I say that because, when commenting on the benefits of the OPS it also said that the critical yield was higher than Mr T’s attitude to risk. But didn’t explain why. This may have implied that the critical yield could not be achieved. Which, as I say above, I think it most likely wasn’t.

But I also think a further 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 OPS1 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	£ 5,090	£ 11,100	£ 23,400
OR			
Pension Commencement Lump Sum	£ 23,800	£ 42,900	£ 76,000
Plus Residual Annuity	£ 3,810	£ 8,360	£ 17,500

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 OPS1 benefits. It was for a non-escalating annuity with no spouse benefit. It made FAL’s statement, that the benefits would be better for anything more than mid growth, untrue. It wasn’t comparing like for like and it failed to make that clear. I think it undermined any earlier commentary about the potential benefits and would have left Mr T with an unreasonable expectation that his benefits could be improved upon.

Again, the suitability report for OPS2 made exactly the same misleading statement using the below illustrations that were again provided by the SIPP provider, using incomparable annuity projections.

The projected benefits are based on the stated assumptions to age 60 and are as follows:-

	Low Growth	Mid Growth	High Growth
Full Annuity	£ 1,160	£ 1,810	£ 2,670
OR			
Pension Commencement Lump Sum	£ 9,540	£10,900	£12,300
Plus Residual Annuity	£ 875	£ 1,350	£ 2,000

Just as in FAL's earlier recommendation, I consider that the inclusion of this without proper clarification was misleading and was likely to have caused Mr T to think that he was likely to be able to receive better benefits than from his existing scheme. Which FAL's own transfer analysis indicated was not likely to be the case at all.

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 setting out potential performance.

It follows that I don't think that a transfer out of OPS1 and OPS2 was likely to provide Mr T with better retirement benefits overall. This analysis didn't support a transfer being in Mr 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 Mr 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 Mr T required flexibility in retirement. This is because based on the evidence I've seen, I don't think he had a genuine need to access his tax-free cash earlier than the normal scheme retirement age and leave their funds invested until a later date. I say this because Mr T had other assets that could be used before sacrificing the guaranteed retirement income that OPS1 and OPS2 offered.

FAL understood that Mr T would like to access tax-free cash at 55 that he would use on home improvements. But that doesn't mean that he needed to access tax-free cash to do that. FAL documented that Mr T expected to need between £200,000 to £300,000 for the home improvement. This was a lot to raise and I accept that he did not immediately have access to that amount in liquid assets. But the details that FAL obtained in its fact-find indicated that Mr T likely had other means to have funded that. After transferring both of his OPSs Mr T's maximum available tax-free cash at age 55 would have been around £55,000. Whilst that would have helped towards the home improvement costs, it didn't nearly cover it. Even adding in the tax-free cash that Mrs T could have accessed by transferring her OPS to a SIPP. Mr T 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 Mr T had a strong need for variable income throughout his retirement. This is because FAL chose to give advice on the transfer without ascertaining how Mr T would want to take income in retirement. Or, more importantly, what pension he could expect to receive if he transferred and took all of his tax-free cash so early. FAL didn't establish when Mr T planned to stop work and what he expected his income needs in retirement to be.

What I can say is that, at some point in the future Mr T was likely to stop work and then be in need of his pensions to help fund his retirement. At the point of FAL's advice, they didn't identify that Mr T had any other available pensions. Whilst he had more working years to potentially make further pension contributions, OPS1 and OPS2 provided his only guaranteed retirement income other than his state pension. And the most valuable way for these to contribute to his 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. FAL documented that Mr T had life insurance in place for around £500,000. Which would have covered the outstanding mortgages. And OPS1 and OPS2 would provide useful spouse benefits for his wife. Mr and Mrs T had no children and no other financial dependents that they needed to leave any financial legacy to.

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 his OPSs.

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

Control over his pension fund

I think that Mr T did have a desire for control over his pension fund. Early meeting notes recorded that Mr T had an interest in managing his own investments. And I think that, based on his background that was a genuine interest. However, Mr T was not an experienced investor. And FAS only assessed him as having a medium attitude to investment risk. He had other assets that he had resisted experimenting with investing. So I don't think that this desire would have overridden any specific advice. I can't see that he had the experience to be able to effectively manage his pension funds on his own. And I note that FAL, in spite of an awareness of that interest, didn't recommend that he do that. It still considered that a professional party would best manage his funds. I think that FAL should have been clearer to Mr T of the risks of taking on all of the investment risk with so little experience. And, as I explained earlier, have been far clearer that regardless of whether his investments were managed by himself or professionally, he would still most likely end up with lower overall benefits.

Summary

FAL made the flexibility, control and potential for higher death benefits on offer through a SIPP sound like attractive features to Mr T, who was likely already thinking along those lines. But FAL wasn't there to just transact what Mr T might have thought he wanted prior to seeking professional financial advice. The adviser's role was to really understand what Mr T needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr T was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr T 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. Mr T shouldn't have been advised to transfer out

of the scheme just to access tax-free cash in his circumstances, and certainly not to allow him to experiment with self-investing.

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

I've considered this carefully, but I'm not persuaded that Mr T would've insisted on transferring OPS1 and OPS2, against FAL's advice. I say this because, in spite of an interest in the investment market, Mr T was actually an inexperienced investor with a medium attitude to investment risk. I understand that in terms of his overall wealth at that time this pension may not have seemed a significant amount, but this pension accounted for the majority of Mr T's specific retirement provision. So, if FAL had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests to use this pension in that way, I think he would've accepted that advice.

I'm not persuaded that Mr T's need for the tax free cash of his interest in being able to experiment with investing were so great that he would've insisted on the transfer knowing that a professional adviser, whose expertise he had sought out and was paying for, didn't think it was suitable for him or in his best interests. If FAL had explained that Mr T could meet all of his objectives without risking his guaranteed pension, I think that would've carried significant weight. So, I don't think Mr T would have insisted on transferring out of the DB scheme.

In light of the above, I think FAL should compensate Mr 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 Mr T, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr T would have most likely remained in OPS1 and OPS2 if suitable advice had been given. I can see that Mr T has accessed tax-free cash from his pension. But, had more suitable advice been given, I am not persuaded that he would have needed to access his 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 Mr 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 Mr T redress as a cash lump sum payment,
- explain to Mr 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 Mr T receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr T accepts Ascot Lloyd's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr T for the calculation, even if he ultimately decides not to have any of their redress augmented,

- and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr T's end of year tax position.

Redress paid directly to Mr 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. Mr 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 Mr 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 Mr T the balance.

If Mr 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 Mr T can accept my decision and go to court to ask for the balance. Mr T may want to consider getting independent legal advice before deciding whether to accept any final decision.

Ascot Lloyd Limited must pay the compensation within 28 days of the date on which we tell it Mr 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 Mr T to accept or reject my decision before 25 September 2025.

Gary Lane
Ombudsman