The complaint

Mr S is represented.

He says Ascot Lloyd Limited is responsible for unsuitable advice given to him in 2017 to transfer his Defined Benefits Pension ('DBP') into a Personal Pension. Ascot Lloyd disputes the complaint. It says the transfer advice was suitable.

What happened

Mr S had five pension plans prior to the advice – two DBPs (one with a cash equivalent value of around £221,500, and the other around £14,700), an existing Personal Pension, a Group Personal Pension and a Group Stakeholder Pension. Ascot Lloyd recommended the transfer of all five plans into a new Personal Pension. However, the complaint is only about transfer of the DBP with a cash equivalent value of around £221,500 (or 'DBP1').

His representative mainly says – the transfer resulted in a loss of accrued future guaranteed benefits in DBP1, substituted by non-guaranteed pension investments that were too high risk for him; he was financially inexperienced for such a venture; and the transfer was not in his best interests.

Ascot Lloyd main says – Mr S' objective at the time of advice was to access Tax Free Cash ('TFC') in DBP1; he neither wanted nor needed income from it; however, the scheme allowed TFC to be withdrawn from it only if he bought a mandatory annuity with the remainder of the pension; so, his objective could only be achieved by transferring DBP1 to a drawdown arrangement in a Personal Pension; he was also concerned about an underfunding issue related to the scheme at the time, so the transfer resolved that too; the number of pensions he had indicates that he was not as financially inexperienced as claimed; and his answers to the attitude to risk questionnaire confirmed he had a balanced/medium risk profile.

One of our investigators looked into the complaint and concluded that it should be upheld, with provisions for redress (which he revised) and with an award of £150 to Mr S for the distress and inconvenience the matter caused him.

He summarised Mr S' circumstances at the time of advice, including that he was in his mid to late fifties, was married with dependents, had around £8,000 per month in joint disposable income, had no intention to draw income from his pensions but sought to use TFC for a personal project, and had objectives to consolidate his pensions, to have them managed for maximum growth and to have, within them, flexible death benefits for his family.

The investigator referred to the regulatory guidance on the assumption of unsuitability in considering a DBP transfer, unless there is clear demonstrable evidence it is in the client's best interests. He noted Mr S' pension's primary purpose was to provide income in retirement, not to fund projects, and Ascot Lloyd's role was to advise on suitability with due care and skill, not to simply enable his objective. He acknowledged that whilst TFC could be accessed in the DBPs, Stakeholder Pension and Personal Pensions at the time, he could see the attraction in the prospect of accessing around twice as much in the recommended transfer arrangement. The investigator also reflected Ascot Lloyd's point that Mr S did not need the mandatory annuity associated with accessing TFC from DBP1.

Nevertheless, the investigator concluded that, on balance, there was insufficient reason to go against the assumption of unsuitability in Mr S' case, because there was not enough to show that transferring DBP1 was in his best interests. He accepted that it was not for Ascot Lloyd to tell Mr S what his objective should be. However, he said, funding the project was not the purpose the DBP was meant to serve and there does not appear to have been a pressing need in the other objectives, so Ascot Lloyd had to ensure that he knew he did not need to make any irreversible decisions about relinquishing valuable safeguarded benefits in DBP1 at a point that was too early to determine his retirement plans and expected retirement expenditure. Ascot Lloyd, he said, should have advised against the transfer, and it is unlikely that Mr S would not have followed such advice.

Ascot Lloyd disagreed with this outcome and asked for an Ombudsman's decision. It objected to the investigator's view on the handling of Mr S' objective. It questioned whether (or not) the view was saying or suggesting that it should have dictated to him how to use his pension and/or that it should have advised against his objective. It argued against such an approach, and said –

"… *it surely the advisers role to provide advice on the best way he can achieve that objective, presented in a balanced way to allow him to decide if that's the route he wants to take.*

In this case the client had clear objectives, that I do not think is our role to judge those objectives, and we provided advice that met those objectives."

The case was referred to an Ombudsman.

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.

Having done so, I have reached the same conclusion expressed by the investigator, for broadly similar reasons.

I too can see how Mr S could have been attracted by some aspects of Ascot Lloyd's recommendation, but, on balance, I find that the recommended transfer of DBP1 was unsuitable for him.

I acknowledge that he defined his own objectives, and I understand Ascot Lloyd's point in this respect. I do not consider that it was obliged to undertake the role of defining objectives for him, and I do not think the investigator meant that.

However, the fact is that Ascot Lloyd was the expert in the relationship. Its professional advice, as a regulated firm, was sought, given and paid for – and it was obliged to give 'suitable' advice. Its role was not limited to simply enabling the execution of the objectives. The service it provided to him was an advisory service, so it had to look into what, in the context of his objectives, was suitable for Mr S.

The regulator's *Handbook* includes Principles for Businesses. Principles 2 and 6 require, in broad terms, firms to conduct their services with due skill, care and diligence and to uphold their customers' interests and treat them fairly. There is case law – Ouseley J, in R (British Bankers Association) v Financial Services Authority [2011] EWHC 999 (Admin) – which also confirms that The Principles are ever present requirements that firms must comply with.

Furthermore, the Conduct of Business Sourcebook ('COBS') section of the Handbook contains, at COBS 2.1.1R, the *client's best interests rule*. As the title suggests, the rule requires firms to uphold their clients' best interests. This essentially reinforces the requirement in Principle 6 for firms to uphold their customers' interests and treat them fairly.

With regards to upholding a client's best interests in a DBP transfer consideration, the regulator's 2016 website guidance on 'assessing suitability' said to firms –

"*When undertaking replacement business, then you need to ensure you:*

- *consider <u>objectively</u> your clients' needs and objectives* …" [my emphasis]

This is directly relevant to how Ascot Lloyd approached Mr S' objectives, and how it was supposed to approach the objectives, which I deal with below.

In January 2017, the regulator issued an alert that included –

"*Transferring pension benefits is usually irreversible. The merits or otherwise of the transfer may only become apparent years into the future. So it is particularly important that firms advising on pension transfers ensure that their clients understand fully the implications of a proposed transfer before deciding whether or not to proceed*."

There are rules and guidance for the specific matter of conducting pension transfer advice in COBS 19.1. As they were in 2017, the rules (R) and guidance (G) included the following –

"*COBS 19.1.-1 … R*

(1) This section applies to a firm that gives advice or a personal recommendation about a pension transfer, a pension conversion or a pension opt-out."

"***COBS 19.1.2 … R***

A firm must:

(1) compare the benefits likely (on reasonable assumptions) to be paid under a defined benefits pension scheme or other pension scheme with safeguarded benefits with the benefits afforded by a personal pension scheme, stakeholder pension scheme or other pension scheme with flexible benefits, before it advises a retail client to transfer out of a defined benefits pension scheme or other pension scheme with safeguarded benefits;

(2) ensure that that comparison includes enough information for the client to be able to make an informed decision;

(3) give the client a copy of the comparison, drawing the client's attention to the factors that do and do not support the firm's advice, in good time, and in any case no later than when the key features document is provided; and

(4) take reasonable steps to ensure that the client understands the firm's comparison and its advice."

"***COBS 19.1.6 … G***

When advising a retail client who is, or is eligible to be, a member of a defined benefits occupational pension scheme or other scheme with safeguarded benefits whether to transfer, convert or opt-out, a firm should start by assuming that a transfer, conversion or opt-out will not be suitable. A firm should only then consider a transfer, conversion or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer, conversion or opt-out is in the client's best interests."

The obligations, regulatory requirements and guidance set out above are relevant to considering the suitability (or otherwise) of Ascot Lloyd's DBP transfer recommendation.

Mr S' circumstances at the time of advice had a somewhat unique aspect. He was less than five years away from the normal retirement age for three (including DBP1) of his five pensions, and around 10 years away from his anticipated retirement age. However, he had a young family, with young dependent children.

He was a high earner, and the main earner in his household. DBP1 was by far his main pension provision. Comparing the cash equivalent values and transfer values amongst the pensions at the time (as of April and May 2017), DBP1's cash equivalent value of around £221,500 accounted for almost 80% of their total value.

Given the proximity to the period in which retirement could be under his consideration, because he was the main earner in the family, and because of the young ages of his children and, given those ages, the likelihood that they would still be financially dependent on him during part of his retirement (be that at DBP1's normal retirement age or at his anticipated retirement age), I consider that the relative security of his retirement income arrangements was distinctly important – especially in terms of considering his best interests.

I do not seek to define his objectives for him in retrospect. I accept that his objectives were as he presented them, to Ascot Lloyd, in 2017. However, as the regulator said in its 2016 guidance, firms had to ensure they considered their clients' needs and goals 'objectively'. Without having to alter the goals that Mr S presented, Ascot Lloyd still could and should have approached those goals, and his 'needs' (including retirement income needs), objectively. In this context, I consider that the point made above would have stood out.

There is evidence in Ascot Lloyd's factfinding questionnaires that his retirement income needs featured in its factfinding and considerations. I can see that it established the alternative sources of retirement income that Mr S planned or hoped to have access to. They were arguably prospective in nature – being, the possibility of a future business sale or of drawing retirement income from a business. I do not say either was unlikely to materialise, but there would have been some future variables in either prospect and details for them were not clearly determined or addressed in the advice. The same applied to details of Mr S' likely retirement income needs, this too was not clearly determined or addressed. One of the questionnaires noted that he was "unsure" in both respects.

Another questionnaire noted that DBP1 essentially represented "ALL" of his pension benefits, but that it formed only a small part of his wider wealth (which was mainly in the business). I understand this approach, and I can see the argument that, in terms of his overall circumstances, DBP1 was probably not *crucial* to Mr S' retirement income needs. However, there remains the argument that, in the absence of proper and detailed considerations of those needs and of the exact way(s) in which they could be met by alternative means, DBP1 could not reasonably have been viewed as a negligible part of his retirement income needs.

Overall and on balance, I do not consider that Ascot Lloyd established, at the time of advice, that DBP1 was not to be a meaningful part of Mr S' retirement income plans. Therefore, DBP1 retained a level of importance to those plans.

His objectives were mainly to use TFC to help in funding the personal project, to have in place death benefits that were conducive to his young family, and to consolidate his pensions (for better flexibility, monitoring and management). It seems the main driver was accessing TFC to help in funding the project. Ascot Lloyd's suitability report reflected this by saying – "*You confirmed that at the moment <u>your priority is to access capital from your pension funds</u> to assist with* [the project] *and also have the flexibility to take income and capital as and when required that will adapt with your business needs in the future*." [my emphasis]

Based on the report – following a transfer, and crystallisation, of all five pensions, Mr S could access a maximum of around £70,000 in TFC; he already had £50,000 to put towards the project, but he needed an additional £500,000; and the stated purpose of using the TFC was to keep '*borrowings to a minimum*'.

As the investigator said, I do not consider that this created a pressing need for the TFC. Presumably the total cost of the project was around £550,000. Mr S could already meet £50,000 of that and, at best, using the TFC in addition meant he would meet a total of £120,000 out of the £550,000 required. It would appear that the substantial, and majority, remainder of £430,000 would have still been sought from borrowing. I do not consider this to be *keeping borrowings to a minimum*. To the contrary, despite using the TFC, borrowing would have still accounted for almost 80% of the project's funding.

For this reason, I find that Ascot Lloyd could not have reasonably considered the TFC related objective to be a reason that *clearly demonstrated* that the transfer of DBP1 was in Mr S' best interests. It fell short of being such a reason. It could be said that the TFC made little to no meaningful difference to the borrowing needs of the project. Remaining in the context of his best interests, it was not worth disrupting DBP1 and losing its valuable and guaranteed benefits for the sake of making a TFC based minor contribution to a project that relied overwhelmingly on borrowing, not on the contribution.

Faced with an analysis like the above, I consider that Mr S would probably have agreed with it. Using the TFC for the project does not appear to have been anything more than an idea he considered. I have not seen evidence that he was committed to or insistent upon such an approach. Hence the reason why he was open to seeking and considering advice. He did not just want help in implementing a transfer in order to access TFC for the project. He wanted to know if the idea of doing so was advisable. Therefore, advice on the objective itself was essentially required. The 2016 regulatory guidance I quoted earlier supports such an approach, especially when added to the 2017 guidance on firms ensuring clients understood the implication of DBP transfers (including their irreversible nature).

I can understand Ascot Lloyd's argument about giving clients advice on how to meet their objectives, but the obligation to advise on suitability remains. As I address next, there were reasons evident to Ascot Lloyd why, on balance, transferring DBP1 was unsuitable. Instead of using these reasons mainly as warnings following recommendation of the transfer, which is what it appears to have done, it should have used them as grounds on which to advise against the transfer.

After recommending the transfer, the suitability report said the following about its disadvantages –

"*It is vital you understand that by transferring your defined benefits pensions you will fully surrender your pension benefits under the schemes and the guarantees that you currently enjoy will no longer apply. There will be no guaranteed income or guaranteed* *increases to your pension in payment, nor any guaranteed spouse's pension as there is under the current defined benefit scheme. The benefits you and your beneficiaries receive will instead be dependent upon the future investment returns achieved by the recommended money purchase pension plan. Within a defined benefits pension the risk of poor investment performance is the responsibility of the pension scheme trustees. However, if you transfer your benefits to a money purchase pension you will shift this investment risk to you*."

"*You will incur a new set of initial charges on reinvestment*."

"*The TVAS report demonstrates that the estimated benefits you could receive from your existing defined benefits pension scheme could be greater than those that could be provided by a money purchase pension plan*."

"*The charges applying to your existing plans are lower than the charges applying to the new plan being recommended. However, the recommendation has been made to facilitate the payment of the PCLS, with the residual funds remaining invested, the more suitable investment strategy, and the greater flexibility in terms of drawing benefits on the new plan*."

"*The money you take out of your pension fund will now form part of your estate for inheritance tax purposes and could be taxed at 40% on your death if it is not spent*."

"*Taking some of your pension fund as a lump sum means there will be less fund available to provide an income, and you may find that you have insufficient income to live on in retirement if the plans for your business don't go as expected*."

These were reasons why transferring DBP1 was unsuitable for Mr S. The TFC related objective did not outweigh them. As I addressed earlier, it was somewhat foreseeable that TFC would not achieve the stated aim of *keeping borrowings to a minimum* in the project, so it might be said that the idea did not even justify itself, let alone justify the transfer of DBP1.

I consider that the pension consolidation and death benefits related objectives also did not outweigh the reasons for unsuitability quoted above.

The recommendation achieved consolidation of all five pensions. The complaint is only about DBP1, so I make no finding on the suitability of consolidating the other four. However, the fact is that they all previously stood independently, so the merits (or otherwise) of consolidating each with the others should have been considered.

DBP1 was quite clearly unique amongst the five pensions. It was one of only two DBPs in the collection, but its cash equivalent value dwarfed that of the other DBP. As I said above, that value accounted for almost 80% of the combined values of all five pensions, so, aside from the other DBP, it eclipsed the values of the other three pensions too. It was Mr S' main pension provision, and it was valuable both in cash equivalent terms and in terms of its guaranteed benefits. For these reasons, and based on the rules and guidance mentioned above, I am satisfied that the idea of transferring it for the sake of consolidation warranted special consideration.

The test applicable to that consideration was, in broad terms, whether (or not) the assumption of unsuitability in a transfer was demonstrably nullified by contemporary evidence that a transfer for the sake of consolidation was in Mr S' best interests. I am not persuaded that this was established.

The suitability report said the idea behind consolidation was to simplify the process of managing the pensions, make them easier to track, have in place online access in order to monitor them, have in place the facility to make future contributions into them and to make it easier to pass them on in the event of death.

DBP1 was not designed for self-management or self-monitoring. The beneficial value within it existed mainly in its guaranteed benefits which did not rely on investment performance and which, as far as the pension-holder was concerned, had no exposure to investment risks. In other words, and in terms of investments, there was arguably nothing to manage or monitor in it. Any underlying fund(s) associated with it was a matter for the scheme, not for Mr S.

As Ascot Lloyd confirmed to him –

"*The TVAS report demonstrates that the estimated benefits you could receive from your existing defined benefits pension scheme could be greater than those that could be provided by a money purchase pension plan*."

The message here appears to be that despite any potential for self-management and self-monitoring within it, it was unlikely that the recommended Personal Pension would match DBP1's guaranteed benefits in retirement.

The report mentions a funding deficit issue within DBP1 at the time, but it also said – "… *I would stress that deficits are not uncommon, and the scheme trustees have a plan in place to make additional contributions to clear the deficit by 31/03/2026*". This date falls before Mr S reaches his anticipated retirement age, so the probability appears to have been that the deficit would be resolved by then. On balance, I do not consider that he had reason to view DBP1's retirement benefits as unreliable, and, as quoted above, the report found it likely that those benefits would not be matched in a Personal Pension.

In terms of future contributions, they could have been considered in relation to Mr S' existing two Personal Pensions, so DBP1 did not have to be transferred and consolidated for that reason alone.

On balance and faced with the assumption of unsuitability, I am satisfied that consolidation was not a good enough reason, in Mr S' best interests, to transfer DBP1.

Death benefits were the third of the three main reasons for the transfer.

I have considered the report's reference to concerns held by Mr S about a potential reduction in DBP1's spouse's pension because of his wife's age and a restriction on the ability to pass the pension fund to his children.

I understand these considerations, but I am also mindful that DBP1's primary purpose was to provide retirement income for him, so extensive/flexible death benefits for his family were not quite intended to be its priority. He was recorded as being in good health at the time and there is nothing in the facts to suggest that a limit to his retirement years could be foreseen. As the report acknowledged, he had wider wealth in assets and in a business, so they could have been considered alongside the death benefits provisions within DBP1 in any arrangements he wanted to make for his family in the event of his death. I believe such wider considerations would probably have diluted his concerns, or at least done so to the extent that a transfer solely for the prospect of more flexible death benefits would not have been viewed as advisable.

On balance, I am not persuaded that the death benefits related objective made the transfer suitable. It did not outweigh the assumption of unsuitability.

Overall, on balance and for all the reasons given above, I uphold Mr S' complaint. Suitable advice from Ascot Lloyd would have recommended retention of DBP1. If he wished, he could have reacted with an insistence upon the transfer despite such advice, and Ascot Lloyd could then have applied its insistent client process. However, given the facts and circumstances addressed above, that would probably not have happened. I consider it more likely (than not) that he would have accepted suitable advice to retain DBP1. He did not need income from it, there is no evidence that he had pre-determined to transfer it, he wanted and sought advice to guide him and with advice on how, on balance, his objectives were not enough to make a transfer suitable, I believe he would probably have agreed.

Putting things right

fair compensation

A fair and reasonable outcome would be for Ascot Lloyd to put Mr S, as far as possible, into the position he would now be in but for its unsuitable advice. I consider that Mr S would have likely retained the occupational scheme.

Ascot Lloyd should 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.

As far as I am aware, Mr S has not yet retired and has no current plans in place to do so. Therefore, compensation should be based on the scheme's normal retirement age, as per the usual assumptions in the FCA's guidance.

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, the calculation should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr S' acceptance.

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

- calculate and offer Mr S redress as a cash lump sum payment,

- explain to Mr S before starting the redress calculation that:

    - 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 current defined contribution pension

- offer to calculate how much of any redress Mr S receives could be used to augment the pension rather than receiving it all as a cash lump sum,

- if Mr S accepts Ascot Lloyd's offer to calculate how much of the redress could be augmented, request the necessary information and not charge Mr S 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 S' end of year tax position.

Redress paid directly to Mr S 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 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.

I also order Ascot Lloyd to pay Mr S £150 for the trouble and inconvenience caused by the complaint matter.

compensation limit

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £150,000, £160,000, £170,000, £190,000, £195,000, £200,000, £350,000, £355,000, £375,000, £415,000, £430,000 or £445,000 (depending on when the complaint event occurred and when the complaint was referred to us) plus any interest that I consider appropriate. If fair compensation exceeds the compensation limit the respondent firm may be asked to pay the balance. Payment of such balance is not part of my determination or award. It is not binding on the respondent firm and it is unlikely that a complainant can accept my decision and go to court to ask for such balance. A complainant may therefore want to consider getting independent legal advice in this respect before deciding whether to accept the decision.

In Mr S' case, the complaint event occurred before 1 April 2019 and the complaint was referred to us after 1 April 2024 but before 1 April 2025, so the applicable compensation limit would be £195,000. However, as stated above and given that he has a representative, Mr S should consider getting independent advice on this.

My final decision

I uphold Mr S' complaint, and I order Ascot Lloyd Limited to execute redress and compensation as ordered above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 19 November 2025.

Roy Kuku
Ombudsman