

The complaint

Mr B says Greystone Financial Services Limited (Greystone) gave him unsuitable advice to transfer his defined benefit (DB) pension fund into a policy with Standard Life. He says this has caused him financial detriment.

Mr B is represented by Spencer Churchill Law Limited (SCL).

What happened

Mr B was a car salesman and joined his then employer's occupational pension scheme in the 1980s. In the following decade his employer embarked on the process of winding-up its final salary scheme. Greystone was the firm appointed by trustees to provide information and independent advice to the employees affected by the changes.

Matters came to a head for Mr B in 1997, when he received advice from Greystone to transfer the value of his DB fund into a Section 32 pension plan with Standard Life. At the time he was 51 years old and married.

Section 32 plans were created in the Finance Act 1981. This allowed the transfer of benefits from an existing workplace pension scheme into a personal pension. One of the main reasons for this was to cater for a situation where trustees were winding up a DB scheme, transferring (or buying out) the individual's pension rights to an individual pension policy. Originally, these plans had to mirror the rules of the previous workplace pension.

Mr B accepted Greystone's recommendation in 1997. In 2008 he switched his Section 32 plan benefits to a new provider. Ultimately he bought an annuity and started taking these benefits from 2009.

SCL raised a complaint on Mr B's behalf in December 2022. It had several concerns about what happened in 1997. It said Greystone's advice was unsuitable, that the firm had been negligent and in breach of duties it had to Mr B. It said he'd lost certain guarantees and protections as a result of the transaction. It said his risk appetite and capacity for loss wasn't properly assessed. And it raised matters such as the increased charges he faced.

Greystone responded to Mr B's complaint on 23 March 2023. It said his case had been brought too late:

"...I have considered the limitation issues arising in relation to the timing of Mr B's complaint. When he made his complaint to our firm in December 2022, more than 25 years had passed since he made his transfer in relation to the group scheme pension in May 1997. It also appears that more than 15 years has passed since he purchased an annuity with Aviva in 2008 (in which our firm was not involved in any way). Mr B's complaint is therefore time barred by the Court's 15 year longstop rule."

"In addition, much longer than 6 years has passed since he made the transfer in relation to the scheme, therefore the 6 year limitation rule has expired. Also, when he made his complaint more than 3 years had passed since he became aware (or ought reasonably to

have become aware) that he had cause for complaint (notwithstanding our view that any complaint would not be justified). If Mr B refers his complaint to the Financial Ombudsman Service or the Courts, we will raise these limitation points and will ask for the complaint to be rejected on these grounds as time barred.”

SCL disagreed with Greystone’s assessment on jurisdiction and it raised Mr B’s complaint with this Service. An Investigator concluded that his case was one we could consider. And he went on to review the merits of his arguments. Having done so he didn’t uphold the complaint because he concluded Mr B didn’t have a choice about whether to stay in his DB scheme.

SCL, on Mr B’s behalf, disagreed with the Investigator’s findings and conclusions. But it failed to provide any new evidence or arguments in support of its position.

As both parties couldn’t agree with the Investigator’s view, Mr B’s complaint has been passed to me to review afresh and to provide a final decision.

Our jurisdiction to consider Mr B’s complaint

Our service was set up by Parliament under the Financial Services and Markets Act 2000 (FSMA). It’s important to make clear that as a public body we don’t have a general, ‘at large’, power to investigate any complaint. We can only investigate what FSMA and the rules made under it say we can – this sets the boundaries of our scheme. And we have no legal power to investigate complaints that are beyond our jurisdiction.

FSMA gives the Financial Conduct Authority (FCA) the power to say what complaints we can and can’t consider. The FCA has set these out in the Dispute Resolution chapter of its Handbook (also known as ‘DISP’ or ‘the DISP rules’). If a business doesn’t consent, this Service can’t consider a complaint which isn’t made within specified time limits.

Dispute Resolution rule 2.8.2R says:

The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service more than

- *six years after the event complained of; or (if later)*
- *three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;*

...unless: In the view of the Ombudsman, the failure to comply with the time limits in DISP 2.8.2 R...was as a result of exceptional circumstances.

Mr B is worried he’s lost out because of advice he received from Greystone to transfer his DB pension in 1997.

Taking the six-year rule first, a complaint is out of time if it’s referred to our Service more than six years after the event complained about. That’s unless the complaint was referred to the respondent business within that period and the complainant has a written acknowledgement or other record of the complaint having been received.

Mr B’s case was raised with Greystone in December 2022. It issued a final response to him in March 2023. As the advice complained about happened in 1997, his case is out of time on the six-year limb of the test.

In respect of the three-year test. I need to decide when Mr B became aware, or ought reasonably to have become aware, that he had a cause to complain. And having established that date, determine whether he brought his complaint within three years of it.

In making its case to time bar Mr B, Greystone said:

“In our view, due to the information that would have been available to Mr B about his pension provision over the years, we consider that he was aware (or ought reasonably to have been aware) well before December 2019 that he had cause for complaint based on the grounds on which he is now bringing the complaint (notwithstanding that we do not consider that the complaint should be upheld). For example, our understanding is that Mr B would have received regular statements direct from the pension provider each year since the pension began in 1997. These statements would have updated him each year on the performance of his pension. Our understanding is that these updates would also likely have included projections to Mr B's chosen retirement age, thereby supplying him with comparative information and the opportunity to review the likely fund available to him on retirement.”

“We also note (from the information provided in the complaint letter) that Mr B appears to have transferred his pension plan to Aviva in June 2008 (which, for the avoidance of doubt, we had no involvement in). We expect that this was the purchase of an annuity, because at that date Mr B would have been aged 62. This itself was almost 15 years ago. Accordingly, at that date in June 2008 Mr B would have been aware of the total amount in his pension fund and the exact annuity figure that his pension fund was able to purchase, and since then he would have been aware of the amount of the annuity payments which would have been paid into his bank account for the past 15 years. If (as he complains) he did not consider that the amount he was receiving as annuity payments was acceptable and/or that it was lower than he expected to be receiving compared to his previous pension provision and/or that other benefits had been lost, he would have known this for the past 15 years and well before December 2019.”

I don't find Greystone's argument here compelling. That's because I can't see Mr B was provided with the information he would've needed after 1997 which showed him a comparison of his pension fund, nor later his annuity benefits, with what he would've been receiving from his former DB scheme. It hasn't done enough to evidence otherwise.

I think Mr B became aware of cause for complaint in late 2022 when he saw an advert in a newspaper about the potential for things to have gone wrong when people transfer away from their final salary pension schemes. SCL raised his complaint with Greystone in December 2022.

So, Mr B's complaint is duly made and this Service can consider it. I'll now go on to look into the merits of his case.

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.

Where there's conflicting information about what happened and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what's most likely to have happened.

I've not provided a detailed response to all the points raised in this case. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've taken into account all submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

Based on the available evidence, I'm not upholding the merits of Mr B's complaint. I'll explain why.

The first thing I've considered is the regulation around transactions like those performed by Greystone for Mr B. Of course, I must be mindful that law, regulation and industry best practice have evolved over the past twenty five years. What's required of firms now, wasn't necessarily the case in 1997 when it gave Mr B its advice.

Nevertheless, a good starting point for my consideration is the FCA Handbook. This contains twelve Principles for businesses, which it says are fundamental obligations firms must adhere to (PRIN 2.1.1 R in the FCA Handbook). These include:

- Principle 2, which requires a firm to conduct its business with due skill, care and diligence.
- Principle 6, which requires a firm to pay due regard to the interests of its customers and treat them fairly.
- Principle 7, which requires a firm to 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.

While most of the Principles were formalised in 2001 – a few years after Mr B received advice - they were nevertheless built upon existing regulations and accepted practice. And I don't think any firms would argue that they wouldn't have tried to adhere to such standards prior to this. As such, they provide a useful framework for thinking about his complaint.

Greystone was the adviser to the trustees of Mr B's DB scheme when they took the decision to wind-up the final salary pension. It put in place a process to engage with members of the scheme. This was by way of a group presentation, followed by individual appointments. A letter sent to Mr B in February 1997 confirmed arrangements and noted he would be informed of his options.

I've seen a letter sent to Mr B dated 18 February 1997 in which Greystone confirmed the background to what was happening with his DB scheme and what options he had. This stated:

"In March 1995, the [DB scheme] was closed for all contributions from existing members...The department within Inland Revenue known as the Pension Schemes Office has now agreed that the scheme has officially been wound up."

"Greystone are now able to advise you of the various options available to you when you consider the transfer of your fund out of the final salary scheme."

"Unless you are receiving a pension income in retirement from a Final Salary Scheme, you are unable to leave your pension where it is. For this reason your transfer options are as follows:

- *To transfer into your [employer's] (Standard Life) Group Personal Pension Plan*
- *To transfer into a Standard Life Section 32 Policy*
- *To transfer into a Section 32 or Personal Pension Plan of another insurance company*

- *To transfer into your new Employers Company Pension Scheme'*

This makes it clear there was no option for Mr B to leave the benefits from his existing DB scheme in place. The only option available was to transfer the benefits to an alternative pension.

Greystone recommended a Section 32 plan to Mr B because of his circumstances. He was over 45 and married. It was designed to mirror some of the benefits he'd have had under his DB scheme. It would provide for a greater tax-free lump sum than a personal pension plan option. If he'd been contracted out of the State Earnings-Related Pension Scheme under his DB scheme then the Section 32 plan would provide a guaranteed minimum pension for that element. And the death benefits prior to retirement were better than a personal pension.

While Mr B had the option of taking a Section 32 plan from any provider in the market, I can see the recommendation was for Standard Life. And this is likely because it was already the in-house provider and was offering to add an extra 5% to client fund values if they opted for its product.

With regards the fourth option, had Mr B left his employer and joined a new company pension scheme, then there might have been an argument that *if* the new arrangement had been a DB scheme, and *if* its rules had permitted the transfer in of his available funds, that *might* have been a good option. But that's not an argument advanced by SCL on Mr B's behalf and there's no evidence to suggest this option was relevant to him.

So it is apparent that, since Mr B wasn't already receiving a pension from the scheme, he had no option to retain the benefits within his employer's DB scheme. From the alternatives that were available, based on the evidence provided and what we know about his circumstances, it's more likely than not the recommendation made by Greystone for a Section 32 plan was the most appropriate.

At the heart of the complaint SCL advanced on Mr B's behalf was that Greystone's advice to transfer out of his DB scheme was unsuitable because of the benefits that would be lost as a result. But of course, he had no option but to transfer out following the winding up of his former arrangement.

My final decision

For the reasons I've already set out, I'm not upholding Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 21 November 2023.

Kevin Williamson

Ombudsman