

## **The complaint**

Mr S complains that Comer & Farnan Pension and Insurance Consult gave him unsuitable advice to transfer the deferred benefits in his defined benefit (DB) pension scheme to a personal pension plan (PPP). Mr S says this has caused him to have lower pension benefits in retirement.

## **What happened**

Mr S was a customer of Comer & Farnan's between, around 1990 and 2004. And over that period provided him with financial advice at a number of points.

Mr S says that Comer & Farnan provided him with advice to transfer the deferred benefits in a DB scheme in 1990. By May 1991 he transferred a cash equivalent transfer value (CETV) from a DB pension into that PPP.

Mr S used his PPP to take a pension commencement lump sum and an annuity in 2006, at the age of 51.

In 2020 Mr S complained to Comer & Farnan via legal representation. As this representative acts on Mr S's behalf I will mostly refer to Mr S in this decision.

Comer & Farnan responded to Mr S's complaint to explain that it thought it had been made too late to be considered. So Mr S brought his complaint to our service. Our investigator was unable to resolve this issue with Comer & Farnan so the case was referred to me for a decision on jurisdiction.

I issued a decision explaining why, based on the evidence available, this case was in our jurisdiction. In that decision I explained:

- That I needed to determine if there was a point where Mr S ought reasonably to have been aware that he was likely to receive lower benefits in retirement than he'd given up in his DB scheme.
- That, in order for me to decide that was the case, I needed evidence that Mr S would have known what his DB scheme benefits would likely have been worth at his retirement age. And comparable evidence of what his PPP might pay, presented in a way that ought to have made it clear to Mr S that his benefits in retirement would be lower.
- I explained that I had seen no evidence from either Mr S or Comer & Farnan that would lead me to decide, on a balance of probabilities, that Mr S ought to have thought he might be worse off because of the transfer.

In response to my jurisdiction decision, Comer & Farnan sent us some of the information that our investigator had been asking it for. That information included what appeared to be advisor notes for Mr S's transfer. It includes the advisor's calculation of Mr S's deferred DB scheme benefits revalued up to his scheme's retirement age of 65. It calculated that to be a pension of £23,807.12 a year by age 65. It didn't include any written recommendation that Mr S had been given at the time.

Our investigator didn't think the information was sufficient to make a difference to our jurisdiction. And looked into the merits of the complaint. She didn't think that the evidence available indicated that the advice for Mr S to transfer had, at that time, been unsuitable.

Mr S's representative disagreed with our investigator's opinion and asked for an ombudsman to decide the outcome. The basis for it disagreeing with the view was that it considered it simplistic, relying simply on the question of whether the transfer was financially viable.

### **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.

Before going on to give my thoughts on the merits of this case, I will first explain that I have not changed my mind on our jurisdiction. I have still not seen any evidence of any written document or recommendation that Mr S was given that set out for him what his DB benefits may have been at retirement age. The evidence I now have persuades me that Comer & Farnan took that into account in making its explanation. But in being able to make any meaningful comparison with pension statements, more than ten years after any advice, I would need to believe that Mr S had something to refer to. Other than a conversation ten years previously. The evidence that we've been provided doesn't mean that this complaint was made too late, for the reasons I already explained.

I understand that Mr S now believes that he is worse off by transferring this DB scheme. Even though he took the benefits in his PPP earlier and in a very different way than was offered by the DB scheme. So I know that Mr S will be disappointed that, for similar reasons to our investigator, I'm not upholding his complaint.

The advice in this case was provided in 1990. And, understandably, the evidence is incomplete. Mr S has unfortunately provided no documentation to support his complaint. Comer & Farnan have long since stopped trading as a regulated partnership. But have now provided us with the documentation that they have been able to find. Where the evidence is incomplete I must decide, on a balance of probabilities, what most likely happened. In this case, it means that, to uphold Mr S's complaint the evidence needs to indicate that the advice to transfer was, more likely than not, unsuitable for him.

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. The advice was provided in September 1990. Comer & Farnan was a member of the Financial Intermediaries, Managers and Brokers Regulatory Association (FIMBRA). And it is FIMBRA's rulebook that applied to the conduct of Comer & Farnan in 1990.

The FIMBRA rulebook set out the expectations on members when giving advice. This included the provision (from July 1988) that advisers should ensure their recommendations were made on the best interests of the client. Mr S's representative, when making out his complaint referred to the presumption that advisers should assume that transfers from DB schemes were unsuitable unless clearly in the client's best interests. This wasn't in fact a rule that was in place in the FIMBRA rules in 1990. So I will not be holding the advice given by Comer & Farnan to that test.

Comer & Farnan have provided a detailed explanation of its understanding of Mr S's circumstances when it provided its advice. So I think, it's more likely than not, that knowledge was acquired in getting to know the client at the time. Of the limited notes we have, there is an indication that Comer & Farnan have assessed Mr S's attitude to risk as 6

which was on a scale of 10. I've no reason to suppose that this was unreasonable or that it wasn't based on the information Mr S provided. Or indeed that he was aware and agreed this.

No comment was given regarding Mr S's capacity for loss. But he was still 30 years from his selected retirement age when Comer & Farnan gave this advice. He was still contributing to his pension. So he had time to continue to build provision for his retirement over his working life. It would have been reasonable to assume that, whilst valuable, this DB scheme wouldn't form the main part of Mr S's retirement provision at age 65. I think that Mr S most likely had sufficient capacity for loss associated with investing his pension in the way that was recommended.

Comer & Farnan have now provided documentary evidence in the form of handwritten notes that it says are from the time of advice. The document is undated, and I have carefully considered the contents. It's headed with Mr S's name. And it sets out options that appear to be retaining deferred benefits of £23,807.12 a year at age 65; year for year transfer of benefits; and taking a transfer value of £23,084 to a PPP. So I think it relates to the transfer in question in 1990 as the CETV is the same as included in the projection from the personal pension provider.

The document includes sketches that look as if they were drawn to accompany an explanation about the pension options. And it indicates how the pension was revalued to reach the estimated figure of around £23,800 a year at age 65. It compares that with an indication of the projected growth based on returns of 8.5% and 13% that were used in the pension provider's projection. It showed how the revalued DB scheme benefits fell within those parameters with the lower return projecting £13,100 a year at age 65 and the upper projecting £53,900 a year at age 65.

On balance, I think that this document is likely to have been produced as an aide to explaining the options to Mr S as Comer & Farnan have explained. It doesn't tell me what information would have been included within a written recommendation. But it does indicate that Comer & Farnan calculated a revalued annual income for Mr S's DB scheme benefits at 65. And had used that to illustrate to him how that value (£23,800) would compare with the benefits he might achieve by transferring. I need to consider whether a transfer was likely to give Mr S higher pension benefits than his DB scheme by transferring. Which I'll refer to as the Financial Viability Test.

The advice was given during the period of the industry-wide Pensions Review, so the rates the regulator published for Financial Viability Tests are directly relevant here. The investment return (critical yield) required to match the occupational pension at retirement looks to be around 10% per year, based on the projections provided.

This compares with the upper limit the regulator gave for a Financial Viability Test (FVT) of 12.9% per year for 29 years to retirement in this case.

For further comparison, the regulator's upper projection rate at the time was 13%, the middle projection rate 10.75%, and the lower projection rate 8.5%.

I've taken this into account, along with the composition of assets in the FVT rate, Mr S's attitude to risk and also the term to retirement. I think Mr S was unlikely to receive benefits of a materially lower overall value than the occupational scheme at retirement, as a result of investing in line with his attitude to risk. So, it's more likely than not that, it was reasonable to suppose that this transfer would meet Mr S's requirement of improving on the benefits he would get. Based on what was known or anticipated at the time.

Mr S's representative has argued that this is too simplistic as it doesn't reflect the other reasons that may have made a transfer in Mr S's best interests. Although Mr S may have considered the chances of his retiring early, he was unable to take any benefits prior to age 50. Which would still have been nearly 15 years off. So there was no particular reason for him to make any decision about the flexibility offered by a personal pension at that time. Even though that appears to have been one of his listed objectives. Overall, I think that the likelihood of this transfer being able to give a realistic chance of improved benefits would have been key in determining whether recommending it was in Mr S's best interests.

Given that the transfer would most likely have seemed to be Financially Viable, there is no evidence to suggest that the advice that Comer & Farnan gave Mr S was unsuitable for him. So I am not upholding the complaint,

### **My final decision**

For the above reasons I am not upholding Mr S's complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 2 October 2023.

Gary Lane  
**Ombudsman**