

## **The complaint**

Mr M complains about advice he was given to transfer the benefits of a defined-benefit (DB) occupational pension scheme to a type of personal pension plan arrangement. He says the advice, which was provided in 1992, was unsuitable for him and he believes this has caused a financial loss.

Hymans Robertson LLP is responsible for answering this complaint. To keep things simple, I'll refer mainly to "HRL".

Mr M has used a representative company to help him bring his complaint.

## **What happened**

HRL initially didn't agree to us looking into this matter now because it said it's been made too late under the rules we operate by.

One of our investigators then considered the case and issued a view saying he did think we could look into it. The investigator concluded that there was enough evidence to say Mr M's pension had probably been transferred from his company DB scheme in 1992 and that he hadn't become aware that he had a cause for complaint until relatively recently.

I've also been in touch with HRL and I've confirmed that it now accepts that the complaint is one we *can* deal with. It also acknowledges that although the complaint was brought against a company with a slightly different name, that company entity is connected with HRL. So it's accepted that HRL is now responsible for answering this complaint.

To be clear then, this is a complaint we can deal with against HRL and the company accepts this.

However, the outstanding issue at the heart of this complaint remains. This is basically that Mr M alleges that he was personally and unsuitably advised by HRL, to transfer away from his DB company pension scheme in 1992. He says he was transferred to a type of personal pension arrangement and has lost out as a result.

## **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.

It's unfortunate that we have very little information or evidence left to refer to here. On the face of it, HRL having no paperwork left to refer to about a pension transfer advice case, would appear to be a failing. I would expect documents, even from 1992, to be retained if they related to a DB pension transfer.

Nevertheless, these events relate to over 30 years ago and I have to take a pragmatic and realistic approach. It's fair to say that those employed in HRL now have no organisational

memory from that far back. And the firm's position now is that during this period of time, it mainly advised pension trustees and the like, as opposed to individual members of pension schemes – so it believes on this occasion it was contracted to provide advice to Mr M's pension scheme trustee rather than Mr M himself. In my view, this aligns with HRL's current line of work, which is on the company website and description. It says: *"we work alongside employers, trustees and financial services institutions, offering independent pensions, investments, benefits and risk consulting services..."*

Mr M is, perhaps understandably, unable to say much about the advice or how it all came about. I've noted he was based in the north of England at the time and worked for a relatively small business with a small pension scheme. On the other hand, HRL was predominantly midlands-based. So, in the absence of much information about this case, I think this geographical distance does tend to support the view that HRL was contracted by the DB pension scheme trustees to provide advice, rather than Mr M himself.

It also seems Mr M has no recollection of personally contacting or using HRL as an adviser and says he and many colleagues were *"brought into a room"* and told transferring away from the DB scheme would be better for them, following rumours or discussions about potential redundancies. I think that this too supports the view that the advice was contracted in by the pension trustees, rather than Mr M himself.

I've then turned to the very limited documentation we do have left in the case. This comprises of some transfer records from early 1992. What these show is that from around March 1992 Mr M did begin a transfer away process and into a type of personal pension plan – so his recollections about this are to some extent true. But the documentation once again is far more suggestive of the advice being provided to the pension trustees and even indicative of the pension scheme potentially being in some sort of difficulty. The letter about what was happening was from the new pension provider – a large pension company of that time – to HRL. It is headed *"Re: Bulk Transfers – Section 32 and PPP Transfers – 170 Lives Approx."*

We know Mr M transferred to a Section 32 scheme which is a type of pension buy out. So, I think all these things show the transfer process was likely instigated by the pension scheme trustees and that individual advice was not provided by HRL to Mr M.

Mr M's representatives point to what it considers to be certain anomalies. For example, it says HRL provided some documents which do suggest Mr M's pension scheme was in financial difficulties, but that this was much later than 1992. It also appears HRL helped wind up the scheme, but this was in the late 1990s, and I've also found a case study on the public internet which shows there was a further engagement between HRL and the DB scheme trustees in the 2000s. So, I have considered these issues in detail.

However, I think that what HRL was likely doing was supplying our Service (the Financial Ombudsman Service) with everything it had relating to either Mr M or his DB scheme. Conversely, Mr M's representatives haven't shown me that this means any of the dealings the parties clearly had in 1992 was specifically between Mr M (as an individual seeking pension advice) - and HRL.

There are also two letters in 1999 which were sent to Mr M by HRL inviting him to take part in a Pensions Review process. The Pensions Review was established in the 1990s following widespread concern, by the then regulator, that some consumers may have been unsuitably advised to transfer away from DB schemes. I think this implication from Mr M here is that he wouldn't have been sent these letters if he wasn't personally advised.

I understand the point being made. Looked at through a certain lens, I can see why a person now complaining about this in the circumstances of Mr M, might think this shows he was personally advised. But I don't agree this strongly enough shows Mr M was personally advised. Against the backdrop of all the other evidence, what I think is more likely to have happened is that HRL collated all the names previously associated with transfers and sent out standard letters in 1999 because the regulator was directing a wide and comprehensive review. The next stage would have probably been to assess individual cases to determine whether they ought to form part of further or detailed review work as directed by the regulator.

### Summary

I completely accept that there is a less than clear picture here of what really went on. However this was over 30 years ago. There is insufficient evidence showing that Mr M was personally advised by HRL. Having said that, I certainly don't doubt Mr M's points of complaint are genuinely and honestly held. But the more persuasive evidence, in my view, is of a company (HRL) that didn't primarily occupy the personal advice 'space' in the pensions landscape. HRL was geographically distant from Mr M and he himself remembers a redundancy situation, which to me, implies a pension scheme that might have been in need of reform or support. So, I think the trustees contracted in help in this context.

To some extent, this is supported by later evidence showing a 'rescue' of the scheme or its members was required. I accept there are some anomalies about this given the dates involved, but I think it's more likely the scheme may have had difficulties that were protracted over several years and it was subsequently wound up.

So, like our investigator, I'm not holding Hymans Robertson LLP responsible for providing unsuitable advice to Mr M because I'm not persuaded that it provided him with any advice at all. This is a conclusion I've had to arrive at on balance of probabilities, due to the lack of evidence. I'm very sorry to disappoint Mr M, but I'm not upholding his complaint.

### **My final decision**

For the reasons I've given above, I am not upholding Mr M's complaint that he was provided with unsuitable advice by Hymans Robertson LLP. In view of this, Hymans Robertson LLP doesn't need to do anything more.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 28 December 2023.

Michael Campbell  
**Ombudsman**