

## **The complaint**

Mr S complains about advice he received from Steadfast Insurance Brokers Ltd ('Steadfast') in relation to the transfer of benefits from a defined-benefit ('DB') occupational pension scheme.

Mr S is being represented by a third party but for ease of reading this decision I'll largely refer to representations as being made by Mr S.

## **What happened**

Steadfast says that Mr S was introduced to it by his accountant, as he was looking to set up a personal pension and for advice about his retirement provisions. Documents from the time recorded that Mr S was 38, married and self-employed.

In July 1989, an application was made for a personal pension.

Steadfast said that, as part of setting up this pension, Mr S was interested in transferring the benefits he held in a DB scheme from a previous period of employment into his new pension arrangement. I can see that he provided authority for Steadfast to gather information from the DB scheme. And the DB scheme trustees provided a cash equivalent transfer value ('CETV') for Mr S' benefits as well as some details of his existing benefits. This included that approximately a quarter of the CETV represent protected rights, at that time, in 1989, the pension entitlement at age 65 was valued at just under £30 per week, which included a guaranteed minimum pension of £6.38 per week and that Mr S could also potentially take a tax-free lump sum at age 65 of just over £4,500.

Steadfast says it met with Mr S on 14 August 1989 to discuss a potential transfer and has provided its file notes of that meeting. These notes confirmed that a personal pension had recently been started and a statement of benefits had been obtained from the DB scheme. The notes say that Steadfast explained what Mr S would be giving up by transferring, that the benefits, including a spouse's pension, were guaranteed and that a personal pension was dependent on market fluctuations. Steadfast says it told Mr S he could be better off leaving his money where it was. But it says Mr S insisted on transferring as he wanted to keep his pension provisions together.

An application was subsequently completed to transfer the benefits from his DB scheme to his personal pension. And that transfer, for a total of £8,362.31 - of which £2,144.78 was protected rights, completed around January 1990.

Steadfast has provided a copy of a further application, completed later in 1990, to transfer another pension into the personal pension it had helped Mr S arrange. And that transfer completed in November 1990.

On 7 October 1997, Steadfast wrote to Mr S. The letter was titled 'Review of Personal Pensions' and said the professional body Steadfast was a member of, the Insurance Brokers Registration Council ('IBRC'), had asked firms to review personal pensions it had arranged where funds had been transferred from an occupational pension scheme to ensure that

appropriate advice had been given. The letter said Steadfast had reviewed Mr S' case and had ensured that the advice complied with the statutory rules Steadfast was bound by. And said, in view of concerns in the media, Steadfast thought Mr S may wish to be reassured. It said if Mr S had any queries he could contact Steadfast.

Steadfast says it received no response to this letter.

Steadfast says that, around September 2000, Mr S contacted it as a change in his circumstances meant he had the opportunity to join his new employer's DB scheme. Steadfast has provided a copy of a letter it sent Mr S at that time in which it said it recommended that he join the scheme as the benefits appeared potentially valuable. And it suggested he speak to the scheme to see if it would accept a transfer from his personal pension.

Mr S complained to Steadfast in May 2022, via his representative. He said he'd been approached by Steadfast about taking advice and had put his trust in it. He said Steadfast had recommended a transfer, telling him he'd receive "much better" returns through a personal pension and hadn't informed him of the benefits he'd be giving up. So, he thought the advice was unsuitable based on his circumstances at the time.

Steadfast said it had advised against a transfer, so it didn't agree that unsuitable advice had been provided. It also said it thought the complaint had potentially been brought too late to be considered. This was because it said Mr S had received annual updates about his pension, had been invited to contact it about a review in 1997 and had been given advice about joining a different DB scheme in 2000. All of which it felt should've made Mr S aware of having reason to complain sooner.

Mr S asked our service to consider his complaint. His representative said it hadn't seen evidence of the invitation for a pension review and Mr S believed he had not received this. They also said Mr S only became aware of potentially having cause to complain when a friend recommended the representative to him.

One of our Investigator's looked into the complaint. He thought that the complaint had been made in time for our Service to consider. He didn't think the annual statements for the personal pension included information that ought to have made Mr S aware of having reason to complain. He felt the letter sent in 1997 had reassured Mr S that there was no problem, rather than inviting him for a review. So, he didn't think this ought to have prompted him to complain. And the recommendation in 2000 related to an entirely separate policy. So, he didn't think he could reasonably say Mr S ought to have complained sooner than he did.

Turning to the merits of the complaint, he didn't think it should be upheld. He noted that the requirements of Steadfast at the time were very different to those in place now. And overall, he was satisfied on balance that it had recommended against a transfer, but Mr S had decided to proceed in spite of this.

Steadfast said it still didn't think this was a complaint we should consider. Its legal representative responded on its behalf, arguing that the Limitation Act 1980 meant this was not a complaint that we could consider.

Mr S did not accept our Investigator's findings on the merits of the matter. He said he had relied on the advice given by Steadfast and disagreed that he'd insisted on a transfer. He also still felt that Steadfast hadn't done enough to explain everything to him that it should've.

The Investigator was not inclined to change his opinion. As a result, the complaint has been passed to me to decide.

## What I've decided – and why

### *Can our service consider the complaint?*

Steadfast has indicated that it still considers this is not a complaint that our service can consider and that it should be time-barred. So, I'll first consider whether we have jurisdiction to consider the matter.

Steadfast's representative argues the Limitation Act 1980 applies and so we can't consider this complaint. But this is incorrect.

The Financial Services and Markets Act 2000 established the Financial Ombudsman Service. Under this Act, which gives us power to consider complaints, we are required to apply the rules of the scheme – the scheme being our scheme and the rules being the Dispute Resolutions rules set out by the regulator, the Financial Conduct Authority ('FCA'), often referred to as the DISP rules. These rules set out the limits to what our service can and can't consider. I am entirely bound by these rules and cannot disregard them. And one of the things these rules cover is whether the complaint has been brought in time for us to consider. But there is nothing within the DISP time limit rules which requires us to apply the law, and so legal time limits, when determining our jurisdiction. We are only required to take the law into account when reaching a fair and reasonable outcome. So, I'm satisfied the relevant consideration here is whether the complaint has been made in time in respect of the DISP rules.

DISP 2.8.2(R) says;

*The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:*

...

*(2) more than:*

*(a) six years after the event complained of; or (if later)*

*(b) 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 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;*

*unless:*

*(3) in the view of the Ombudsman, the failure to comply with the time limits ... was as a result of exceptional circumstances; or*

...

*(5) the respondent has consented to the Ombudsman considering the complaint...*

Steadfast has indicated it does not give consent to our service considering this complaint.

The event being complained about is the advice given in 1989 around the transfer of benefits from Mr S' DB scheme, with the transfer having completed in early 1990. Mr S didn't complain about this until 2022 – clearly more than six years later. So, I'm satisfied that the complaint has been brought too late in regard to the six-year part of the above rule.

As a result, what I need to decide is whether the complaint was made more than three years after Mr S became aware, or ought reasonably to have become aware, that he had cause for complaint, and whether this gives him more time under the three-year rule.

Steadfast has said that Mr S received annual summaries of his personal pension, after the transfer. And has suggested this should've made him aware of having cause to complain. I've been provided with copies of the summaries Mr S received between 1997 and 2000. But I don't think I can reasonably say these ought to have made him aware of having reason to complain about the advice he received.

The summaries do give total values of the pension. But these amounts significantly exceed the CETV of the DB scheme from 1989. So, to Mr S, would've indicated the pension had increased in value. The statements do indicate there are four parts to the pension – so the value is not solely derived from the DB transfer, as it also included contributions by Mr S and the separate transfer from late 1990. But given that the value of the pension was shown to be steadily rising, I don't think Mr S ought to have been aware from this information that he might've had reason to complain about the transfer of his DB scheme benefits.

The summaries did also include projections of what benefits the pension fund might be able to provide in the future, dependent on the level of growth that was achieved. But again, those values exceeded those quoted in 1989 as the value of pension benefits the DB scheme would provide. It is true that the pension benefit values given in 1989 were the values at that point. And these would've been revalued in the time until retirement. But the 1989 figures, outlining the guaranteed benefits at that point, are the only ones that I can see were potentially shared with Mr S, so would've been the only ones he could compare with, if he had in fact retained them.

I can't see that the summaries contained anything else which suggested that Mr S might've been worse off as a result of the transfer. And I haven't seen anything to suggest summaries provided in different years contained any additional information. So, I don't think the receipt of these annual summaries meant Mr S ought to have been aware he might've had cause to complain about the transfer.

Steadfast has also referred to a letter it sent to Mr S in 1997, about a review of the advice it provided.

In October 1994 the Pension Review was established by the Securities and Investments Board ('SIB') – one of the principal regulators at the time. This was an industry wide review of pension business, particularly advice relating to moving occupational pension schemes, carried out by authorised firms between April 1988 and June 1994. And part of the review was that SIB regulated firms needed to write to customers that were potentially affected and ask if they wanted to take part in the review.

However, in the late 1980s the financial services industry was not all subject to a single regulator for the conduct of business, as it is today. There were a number of regulatory bodies whose members were permitted to carry out investment business, including advising on pensions. And Steadfast does not appear to have been regulated by SIB. Rather it was a member of the IBRC.

Steadfast has provided information to show that in September 1997 the IBRC instructed its members to review past advice relating to a transfer from an occupational pension. And that it provided guidance, and a checklist, to assist with that review. But what this means though is that the review Steadfast undertook was somewhat different to the industrywide Pension Review. And crucially, how this was communicated to Mr S appears to have been different as well.

I've seen a copy of the letter Mr S was sent. It explains that the IBRC had asked firms to review past business where funds were transferred from an occupational pension scheme to ensure appropriate advice had been received. But there was no mention of why this was being reviewed. There was no reference to the Pension Review or that there were concerns about potential industrywide mis-selling that had prompted that review. Rather it just said Steadfast had been asked to review its past business. The letter said it confirmed that Steadfast had reviewed Mr S' file, based on IBRC guidance and had ensured that the advice was suitable. But again, there was no context. It simply told Mr S that there was nothing wrong. And it went on to say that Steadfast thought Mr S may have wished to be reassured. It then said if he had any queries, he could contact Steadfast. But this was not an invitation to a review nor did it ask him for any further information to assist with a review. Rather it simply said there was no problem and suggested that was the end of the matter.

I don't think this letter meant Mr S should've been aware of a potential reason to complain about the transfer of his DB scheme benefits. It didn't give any real context about why there might have been something wrong. And it instead said there wasn't anything wrong. Which I don't think Mr S had any reason or cause to question at that time.

Steadfast has also referred to having told Mr S in 2000 that it recommended he join his new employers DB scheme because of the valuable benefits it offered. And that Mr S didn't raise any concerns at that time about the previous advice.

The discussion in 2000 involved joining a DB scheme. And the previous transfer involved leaving one. But I don't think that was enough to say Mr S ought to have questioned what happened previously. Each pension scheme is different, providing different benefits. And this was an unrelated transaction over ten years after the initial transfer. I can't see that there was any information provided at that time that suggested the earlier transfer was questionable – indeed three years previously Steadfast had said there wasn't an issue with the advice provided.

So, based on everything I've seen, I don't think any of the reasons Steadfast has put forward ought to have given Mr S reason to think he had cause to complain.

I've also thought about whether there was anything else that ought to have prompted Mr S to complain. But I haven't seen any other evidence or been made aware of any other information that leads me to think Mr S ought to have been aware of having reason to complain sooner than he did. As a result, in this specific case, I think what Mr S has said – that he wasn't aware he might've had cause to complain until he spoke to his representative – is reasonable. And as he complained within three years of that, I think this is a complaint that we can consider.

As a result, I've gone on to consider the merits of the matter.  
*Did Steadfast act incorrectly when providing advice?*

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

When considering what is fair and reasonable, I am required to take into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time the advice was given. It isn't appropriate to apply today's regulations retrospectively. And it's also worth noting that the investment climate today is very different to that which existed at the time of the advice here. So, I think it's important to reiterate that I'm looking at whether the actions of the adviser were, in my view, fair and reasonable at the time the advice was

given – not if the recommendation was suitable based on what we now know and the rules that apply today.

The two parties have given very different versions of events. 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.

Steadfast has said it was approached by Mr S, with the introduction made by his accountant, about setting up a pension. And it was while this pension was being established, Mr S asked about also transferring benefits from his previous pension to consolidate his retirement provisions.

Mr S says Steadfast approached him offering advice about transferring the benefits from his DB scheme, told him a personal pension would give “much better” performance, and that it recommended the transfer. But he doesn’t remember being given much detail or being treated as an insistent client. He has said separately that the adviser was a friend of a friend and that is how Steadfast approached him. But later, in response to the Investigator’s opinion, said his accountant did make the introduction.

The transfer took place over 33 years ago. So, while I’m mindful of what Mr S has said he recalls about the process, given the time that has passed I wouldn’t expect him to remember the events clearly as memories can and often do fade – as I think is evidenced by the inconsistency in what he’s said about how he first came to be in touch with Steadfast. And with that in mind, I think the documentary evidence from the time is likely to be a more accurate reflection of what happened. The documentary evidence available is limited. Which I don’t think is unreasonable, given how long ago these events took place. But based on what is available, I think this supports what Steadfast has said.

The application form, to the relevant pension provider, for the self-employed personal pension that Steadfast set up on behalf of Mr S indicates this was completed in July 1989, before any application to transfer the benefits from the DB scheme was begun. Indicating that establishing the pension was not solely for the purpose of a transfer. And the annual pension summaries I’ve seen confirm the pension was made up a several different plans. One of which being a self-employed plan, which was receiving regular pension contributions from Mr S. Given the information from the time recorded that he was self-employed and the nature of the pension established, on balance I’m satisfied that the motivation for the original discussion between him a Steadfast was to establish a pension arrangement that suited his employment situation at the time which he could contribute to. And I think establishing this self-employed policy, which seems to have been appropriate to Mr S’ circumstances at the time, suggests Steadfast took reasonable steps to understand Mr S’ circumstances and requirements.

I’ve also seen evidence that, after the DB scheme benefits were transferred to Mr S’ new pension, he also transferred benefits from another pension around November 1990. Which is again supported by the pension summary documents as these show the overall pension contained multiple transfer plans. I think this supports Steadfast’s argument that Mr S’ motivation was to consolidate his pension benefits together once the personal pension was established.

The parties also disagree about what advice was given about the DB scheme. Steadfast says it didn’t recommend a transfer but that Mr S insisted. Whereas Mr S says Steadfast said he should transfer without discussing his existing benefits or the relevant risks.

I haven’t been provided a copy of a written suitability report or letter of recommendation. And

I understand one was not produced – because Steadfast says it didn't recommend a transfer. It also wasn't a requirement at the time that a written recommendation be produced. So, I don't think the lack of one here means Steadfast has done something wrong. Steadfast has though provided two notes, recording the meeting that it held with Mr S on 14 August 1989, when the DB scheme benefits were discussed.

The notes say that Mr S asked Steadfast to look into his DB scheme benefits as it had established the personal pension for him. Which, as I've already explained above appears to be supported by the evidence I've seen.

The note goes on to say a benefit statement was obtained from the DB scheme trustees and discussed and that Steadfast thought the benefits, including the spouse's benefit, were good. Mr S says that the existing benefits weren't made clear to him. I've seen a copy of the transfer value quotation the DB scheme trustees provided. This was dated almost a month before the meeting to discuss the DB scheme benefits is recorded as having taken place. The document included information about the benefits Mr S was already entitled to under the scheme. This document was addressed to Mr S. So, in my view, was likely first provided to him and then shared by him with Steadfast. And given he was in receipt of the document, I think it's unlikely that this wasn't discussed during the meeting with Steadfast.

Steadfast says it noted that a personal pension would be subject to market fluctuations and annuity rates and that Mr S could be better off leaving the benefits where they were. But Mr S insisted on moving the benefits to have all of his arrangements together, so an application form was then completed. And again, as I've explained above, I think consolidating his benefits seems to have been a motivation for Mr S.

Taking all of this into account, on balance, I think the notes Steadfast have been able to provide from the time about the advice it says was given are likely a more accurate reflection of what took place than Mr S' recollections more than 30 years after the event. So, again on balance, I think it's likely that Steadfast recommended that Mr S should not transfer his DB scheme benefits. But, after discussing the relevant risks and satisfying itself that Mr S understood these – which I think on balance did likely form part of the discussion, given this was recorded in the meeting notes and, for the reasons I've explained, I believe these are likely to be an accurate reflection of what happened – Mr S chose to proceed despite this advice. And I think he likely knew at the time he was proceeding against advice, even if he now, understandably, doesn't recall this.

I don't think Steadfast was wrong to facilitate the transfer on Mr S' instruction. There weren't any requirements of it at the time in regards to a specific insistent client process, and it was allowed, under the rules at the time, to process an application on this basis.

So, taking everything into account, while I know this will come as a disappointment to Mr S, I don't think Steadfast has acted unfairly when it provided advice here.

### **My final decision**

For the reasons I've explained I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 29 June 2023.

Ben Stoker  
**Ombudsman**