

The complaint

The estate of Mr R complains that O'Connor and Co (Financial Services) Limited gave Mr R unsuitable advice to transfer his deferred defined benefit ('DB') pension to a section 32 pension plan in 1990.

What happened

Around 1990 Mr R received advice from O'Connor's to transfer a section 32 pension plan. Mr R accepted O'Connor & Co's advice and in January 1991 his DB scheme transferred around £5,600 to a section 32 pension plan.

In October 1994, the then regulator, the Securities and Investment Board, established an industry wide review of certain pension business carried out by authorised firms between 29 April 1988 and 30 June 1994. This was generally referred to as the 'Pensions Review'. The advice that O'Connor & Co gave to Mr R was captured by the Pensions Review.

The review required businesses, like O'Connor & Co, to contact customers who were affected to offer them a review of the pension advice. O'Connor & Co did that for Mr R, writing to him in March 1999. This letter started with the phrase, in capital letters, "*your pension were you badly advised*". It explained that the regulator had asked firms to contact customers to offer them the opportunity to have their case checked to see if they were given correct advice. Mr R accepted, and returned O'Connor & Co's questionnaire in March 1999.

O'Connor & Co wrote to Mr R on 5 June 2001, explaining that the review had established that it was likely he would have been financially better off had he remained in his DB scheme, rather than transferring to the personal pension. O'Connor & Co offered redress for the sale of his pension that it said was in line with guidance from the regulator – the Financial Services Authority ('FSA'). Mr R signed to accept the offer of compensation on 25 June 2001.

On 2 August O'Connor & Co wrote to Mr R to confirm that the compensation had been paid as an endorsement to the original section 32 pension. And it provided the policy number for the Transfer Plan Endorsement policy with the same provider as Mr R's personal pension.

Benefits were taken from his pension policy in 2014.

Sadly, Mr R passed away. His wife, Mrs R, as executor of his estate, complained to O'Connor & Co in February 2024. The complaint was about the loss of the valuable defined benefits that Mr R held in his DB pension.

O'Connor & Co explained that it had previously carried out a review of Mr R's transfer advice. It explained that it had agreed that Mr R was poorly advised and that it calculated Mr R's likely loss. And compensated him for that in 2001.

Mrs R didn't accept O'Connor & Co's explanation and referred this complaint to our service. Our investigator looked into the matter and didn't think this complaint should be upheld. He explained that this complaint had already been considered as part of the Pensions Review

and he didn't identify anything wrong with the way that it carried that out. As Mrs R did not accept our investigator's answer this case has been referred for an ombudsman's decision.

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.

The events under consideration in this case happened decades ago. Whilst there are time limits that apply to our jurisdiction over complaints, O'Connor & Co have been kind enough in this case to consent to our service considering the complaint.

I would also like to offer my sympathies to Mrs R for the loss of her husband. I appreciate that this must have been a very difficult time with additional upset in trying to address the financial implications of that. I know that she will not be happy with the outcome I am giving because I am not asking O'Connor & Co to do anything further. But I hope that my explanation helps her to understand why.

In considering this case, even though it has been brought to us by Mrs R, it has been done on behalf of Mr R. And the limit of what I will be able to consider is the regulated activity that O'Connor & Co provided for Mr R. Which was the role it played in recommending that he transfer a deferred DB pension to a section 32 pension plan.

That transfer meant that he gave up guaranteed type benefits in exchange for a pension where the benefits would be dependent on future investment returns. The investment returns that were needed for this to 'work out' did not materialise, so the pension that Mr R ended up with in 2014 was probably smaller as a result of the transfer in 1991.

The advice that Mr R was given was already captured by The Pension Review, however. This was put in place, as I explained above, in recognition of the potential harm consumers may have suffered in transferring these types of pensions. It was put in place by the regulator and overseen by that and the subsequent regulator – the FSA.

The Pension Review was not a process that was instigated by a complaint as such. It was a proactive measure that the regulator instigated to address potential harm without the need for consumers to individually complain. I have seen the letter that O'Connor & Co sent Mr R to offer him the review and it was what I would expect to see. It indicated that he may be worse off as a result of the advice, which was important because firm's needed to make that clear. And, in Mr R's case, it was effective because he responded to it to confirm that he accepted the review.

O'Connor & Co found that its recommendation was not suitable so passed the loss calculation to a qualified actuary. This was what I would expect to see and complied with the regulatory expectation at the time. The information provided to the actuary was from Mr R's completed questionnaire, from the DB scheme and from the section 32 pension provider. There were assumptions that the actuaries used which were overseen by the regulator. This was necessary because it was performing a calculation to estimate the potential future losses at retirement. That depended on a number of unknown things, like future investment returns, annuity rates, inflation.

The regulator expected O'Connor & Co to retain all of the documentation relating to the Pension Review. And, even though more than twenty years have passed I am pleased to see that it has provided a comprehensive set of documents. I thank it for this. I have considered everything and I am satisfied that the information that was provided to the actuary was accurate. Our service is not able to check the actuary's calculation in detail. But,

based on what I understand, and the oversight in place by the regulator at the time, I am satisfied what was done was fair and reasonable.

This means that the offer to put in place a supplementary pension policy to address the anticipated shortfall in pension benefits met the regulator's expectation of a fair and reasonable way for O'Connor & Co to put things right for Mr R. I can see from its file that O'Connor & Co contacted the DB scheme to explore re-instatement, but ascertained that was not possible.

The regulator intended the Pensions Review to be a one-time measure to correct unsuitable pension transfer advice like this. It was intended to be a final settlement, which I think O'Connor & Co made clear to Mr R in its offer letter. It included the options for Mr R had he been of the opinion that the offer wasn't fair and he wanted to refer the matter to the ombudsman. I am satisfied that the compensation offer that was made was fair and complied with what was expected of O'Connor & Co.

I understand that, in spite of the Pension Review redress, the pension benefits that Mr R obtained were probably lower than he could have had in his DB pension. This was because the assumptions that were used in 2001 about things like potential investment growth and future annuity rates did not materialise. But, as I explained, the offer of redress that was made was intended to be a final settlement offer. And it was accepted as such. As I am satisfied that O'Connor & Co put in place redress for the unsuitable advice that was fair and reasonable at the time, it is not fair and reasonable for me to now uphold this complaint about the same pension transfer.

My final decision

For the above reasons I am not upholding the estate of Mr R's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr R to accept or reject my decision before 13 June 2025.

Gary Lane
Ombudsman