

The complaint

Ms H complained that an adviser working for Norwich and Peterborough Building Society ('NPBS') gave her unsuitable advice in 1992 to transfer her defined benefit (DB) pension to a personal pension.

Yorkshire Building Society (YBS) is now responsible for any advice given by NPBS.

What happened

Ms H was advised to transfer her DB pension to a personal pension with Commercial Union in 1992. She says she was advised by an individual I'll refer to as "MT" in this decision who was working for NPBS at the time. She says she was a cautious investor and wasn't fully aware of the significant guarantees she was giving up at the time. It was only when she spoke to former colleagues who had remained in the DB scheme and who had now much greater pension benefits than her, that she became aware she was misadvised all those years ago. She says she lost out financially as a result of the poor advice she received.

Ms H complained to YBS in 2023 who didn't investigate the complaint as they thought Ms H had complained outside the regulator's time limits. Ms H then referred her complaint to our service.

When supplying their files to us, YBS confirmed that as Ms H had only more recently become aware that she may have reason to complain, they considered time limits had not been breached and our service could look into the complaint. They tried to investigate the complaint but didn't have any documents from the time of the advice. They only had limited documents Ms H had provided. YBS thought the documents might not have been transferred to YBS when they merged with NBPS in 2011.

One of our investigators upheld the complaint in March 2024 and asked YBS to compensate Ms H for the losses she suffered due to the pension transfer as well as pay her £250 for any distress the matter had caused her.

In May 2024, YBS accepted the investigator's view and agreed to carry out loss calculations.

Around nine months later, in February 2025, YBS got back in touch with our service and asked for the complaint to be reopened. They said they had agreed to compensate Ms H on the assumption that she had been advised by an NPBS adviser in 1992. However, whilst they were collating information to carry out the loss calculations they had been provided with further documents by Aviva (who had taken over Ms H's Commercial Union plan) which indicated that the Commercial Union pension application had been submitted by a different adviser firm, John Jordan Financial Services, who also had received commission from Commercial Union in respect of Ms H's pension.

YBS considered that this information showed it wasn't NPBS who had provided Ms H with advice and therefore it wouldn't be fair to hold YBS responsible for the poor advice Ms H received.

YBS also made further comments on the time limits issue and said Ms H ought to have been aware earlier that she had concerns about the performance of her pension given she received regular annual statements.

YBS asked for an ombudsman decision given the new information that raised doubts about their liability for the advice given to Ms H.

The complaint was passed to me for an ombudsman decision.

Provisional findings

After reviewing all information available, I shared my provisional findings with both parties. I said:

- **Unsuitable advice**

As the investigator's view had been accepted by YBS over a year ago that unsuitable advice was likely given and this hadn't been disputed since, I wouldn't revisit the reasons for this again. The issue left in dispute and which needs to be decided is whether NPBS gave the advice in 1992 and consequently YBS is liable to compensate Ms H for any financial losses as a result of this advice.

- **Time limits**

Even though YBS had previously waived their concerns about time limits, I decided to address this as it had been raised again. Ms H told us when she was going through her divorce and received the value of her pension in 2023 she spoke to previous colleagues who had since retired from the DB scheme and who were getting a higher lump sum and guaranteed income in retirement. This made her aware she had been disadvantaged (less than three years before she complained).

I find her testimony plausible. I agree that Ms H would have most likely received statements of her personal pension over the years which would have shown her current pension value and possibly even benefit projections to retirement age. However, in order to be reasonably aware that she was worse off than in her DB scheme she needed to be able to compare her projected DB benefits with her current pension projections. I have seen the deferred benefit statement that was issued at the time and I don't think it was clear enough for a lay person like Ms H to quickly grasp what she was actually entitled to at retirement age in the DB scheme to allow her to compare the benefits she had given up to what she was could expect from her new pension. So I don't think receiving statements of her new pension ought to have reasonably triggered concerns about the advice she received. I also can't see any other information or event that would have caused her to be concerned about the advice earlier than 2023. I'm satisfied she has complained in time.

- **Liability**

Ms H has been consistent in her testimony that it was MT who advised her to transfer her DB pension. She says this happened shortly after the birth of her first child and she knew MT personally. She was going to the same maternity class as his wife. She clearly recalls MT visiting her at her house and filling out forms with her in her kitchen. She says she never had contact with anyone else. I find her testimony believable and it is backed up by written evidence in the form of a letter in 1992 from MT at NPBS asking Ms H's DB scheme for transfer paperwork and saying that they were advising Ms H on her options with regards to her pensions. MT's position was

recorded as Pension and Investment Consultant. So based on the evidence provided my provisional finding was that MT on behalf of NPBS was recommending Ms H to transfer her pension and was making arrangements to facilitate this.

I acknowledge that there is also evidence John Jordan Independent Financial Services was involved in the process somehow. Their details are stamped on the first page of the Commercial Union application form and it's recorded that they received commission from Commercial Union. Ms H told us that from what she knows MT used to do business with John Jordan and "used to put business through them", so I don't think YBS's theory that Ms H spoke to MT and then decided to receive advice from a different, independent adviser is likely. I think it's more likely that MT and John Jordan were working together somehow. A possibility is that MT might have used paperwork from John Jordan as he himself maybe didn't have the right permissions to advise on a pension transfer.

Ms H doesn't recall any written advice and it wasn't a requirement at the time to receive formal advice to transfer a DB pension. That doesn't mean no written advice was given. The transfer happened a long time ago and Ms H does recall signing forms with MT at her house, so it's reasonable to think that there might have been some written recommendation and that even might have come from John Jordan-even if Ms H says she never spoke to or met anyone else.

It's clear both MT and John Jordan were involved here. MT might have only given verbal advice and the paperwork came from John Jordan which MT completed and got signed with Ms H. John Jordan might have submitted the application under their name as they had different permissions or MT didn't have permissions to submit such business.

We simply don't know. Ms H said MT told her he would receive commission from the transfer, so I think it's likely that any commissions to John Jordan was shared. Verbal advice to transfer is still advice and it was MT who initiated the transfer. So I do think MT holds responsibility for the advice given to Ms H and the financial losses she has suffered as a result. Without his involvement the transfer likely wouldn't have happened.

It's possible John Jordan might also have contributed to or caused the same losses. However, John Jordan is in default and I can only consider YBS's responsibilities here. In the circumstances I think it's fair and reasonable for YBS to compensate Ms H for all of the losses caused by transferring her DB pension.

Responses to my provisional findings

I gave both parties further opportunity to respond. Ms H didn't provide any further comments.

YBS asked me to reconsider my findings on their liability. They said in summary:

- Given the evidence that commission was paid to John Jordan, it's more likely that they were responsible for the advice and not MT. If MT referred Ms H to John Jordan for advice because he didn't hold the appropriate permissions, this doesn't mean he is responsible for the advice which was subsequently given to Ms H.
- At the time of the transfer NPBS had a tied adviser relationship with Norwich Union, so it's highly likely MT couldn't have advised to transfer away from a pension held with Norwich Union (Ms H's DB scheme employer was Norwich Union). Passing on clients to independent professionals in such circumstances would have been

common. This doesn't mean the referring firm would remain responsible for subsequent advice or a backhanded commission can be assumed.

- There is no evidence to conclude John Jordan "lent" their permissions to MT which would imply wrongdoing by both individuals. YBS established MT was authorised for pension transfer activity later in his career, however this was after the time of the advice.
- In the absence of tangible evidence or where information is incomplete, unclear or contradictory, the ombudsman must base their decision on what most likely happened on the balance of probabilities. The position maintained by Ms H and accepted by the ombudsman cannot reasonably be deemed more likely than not given that there is evidence another firm received a commission at the time.

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.

As no further submissions were made on the unsuitability of the advice, the suggested redress or on time limits I consider these issues remain undisputed. I will continue to only focus on the liability issue.

I carefully considered YBS's arguments and I acknowledge that the advice happened over 30 years ago and documentation is very limited. As explained previously, I accept that John Jordan received commission and that the application was submitted to Commercial Union under their name. So there is no doubt that John Jordan was involved here in some capacity.

I do agree that if MT couldn't help Ms H, for example due to a lack of appropriate permissions or a tied adviser status, and simply referred Ms H to John Jordan for pension transfer advice he wouldn't hold any responsibility for subsequent advice given by John Jordan. However, in my view there is sufficient information and evidence here that MT more likely than not did give advice to Ms H rather than simply refer her to John Jordan.

Ms H gave detailed, consistent and convincing testimony about her dealings with MT and that it was him who recommended her to transfer her DB pension and who completed all the documents with her. And her personal recollections are supported by a letter dated 13 March 1992 from MT acting for NBPS as a pensions and investment consultant to the DB scheme asking for transfer paperwork and stating that they were *"currently advising [Ms H] on her options with regards to her retained benefits held under [The Norwich Union] scheme"*.

If, as YBS say, MT couldn't advise Ms H to transfer away from a Norwich Union pension then I would have expected him to refer her straight away to another adviser rather than ask for the paperwork from the DB scheme and help Ms H complete everything. The same would apply if he didn't have the correct permissions and therefore couldn't be involved in the advice. I also note that at the bottom of the letter it states that NPBS were appointed representatives of the Commercial Union Marketing Group. So I think it's likely NPBS might have also had some commercial interest in Ms H ending up with a Commercial Union pension.

It's correct that I need to decide what I think most likely happened on the balance of probabilities and for the reasons explained I do think it's more likely than not both MT and John Jordan were involved here and that MT did advise Ms H (even if this was in tandem with John Jordan).

I remain of the view that it's fair and reasonable in the circumstances to hold YBS responsible for the advice given to Ms H. I'm satisfied that on balance without MT's recommendation Ms H would likely not have transferred her DB pension.

Putting things right

As set out by the investigator, a fair and reasonable outcome would be for YBS to put Ms H as far as possible into the position she would be in but for the unsuitable advice. It's reasonable to assume she would have likely remained in her DB scheme.

YBS should undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice as detailed in PS22/13 and set out in the regulator's handbook in DISP App 4. I understand such a calculation has possibly already been undertaken.

If the redress calculation demonstrates a loss, as explained in PS22/13 and set out in DISP App 4, YBS should:

- calculate and offer Ms H redress as a cash lump sum payment,
- offer to calculate how much of any redress Ms H receives could be used to augment the pension rather than receiving it all as a cash lump sum,
- if Ms H accepts YBS's offer to calculate how much of the redress could be augmented, request the necessary information and not charge her for the calculation, even if she ultimately decides not to have any of the redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Ms H's end of year tax position.

Redress paid directly to Ms H as a cash lump sum in respect of a future loss includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4.3.31G(3), YBS may make a notional deduction to allow for income tax that would otherwise have been paid. Ms H's likely income tax rate in retirement is presumed to be 20%. In line with DISP App 4.3.31G(1) this notional reduction may not be applied to any element of lost tax-free cash.

If not already paid, a payment of £250 should be paid to compensate for any distress Ms H was caused when she found out she had been given unsuitable advice and was a lot worse off than her former colleagues who had remained in the DB scheme.

My final decision

I uphold this complaint and require Yorkshire Building Society to compensate Ms H as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 5 August 2025.

Nina Walter

Ombudsman