

## **The complaint**

Miss P has complained about the advice she received in 2010 to transfer her defined benefit pension to a personal pension. Alexander Beard Investment Management Limited (“ABIM”) is now responsible for that advice so it is ABIM that I will be referring to in my decision.

## **What happened**

In 2010, ABIM advised Miss P to transfer the defined benefit (“DB”) pension she had accrued through her employer to a personal pension. She accepted that advice and transferred her pension. In October 2024, Miss P complained to ABIM about the advice it had given her. In brief, she said ABIM hadn’t adequately explained the features of her DB pension, hadn’t set out the advantages and disadvantages of transferring and hadn’t properly established her circumstances and objectives. She said if ABIM had acted as it should have done, it wouldn’t have recommended the transfer and she wouldn’t have considered the transfer as being in her best interests.

ABIM didn’t think it had done anything wrong. It addressed the specific points raised by Miss P. In addition, it said the complaint was “time barred” – made too late – under the rules that the Financial Ombudsman Service has to follow because it related to events that took place in 2010.

Miss P referred her complaint to us. Our investigator concluded that the complaint *wasn’t* time barred. And she concluded ABIM’s advice hadn’t been suitable. She set out what ABIM had to do in order to put things right for Miss P.

ABIM asked for an ombudsman to decide on the case.

## **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.

Having done so, I’ve reached the same conclusions as our investigator.

### Why I can look at this complaint

We can’t look at every complaint that’s referred to us. What we can look at is defined in the Dispute Resolution (“DISP”) section of the Financial Conduct Authority Handbook, the relevant section of which for the purposes of this complaint is DISP 2.8.2R. It says, in summary, that the ombudsman cannot consider a complaint if it was made more than six years after the event complained of or (if later) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that there was cause for complaint.

Miss P’s complaint is about the advice she was given by ABIM to transfer her occupational DB scheme to a personal pension. That advice was given in 2010 so considerably more than six years before Miss P complained, which was in October 2024.

Because not every potential problem will manifest itself within a six-year period, the three-year part of the rules allow someone three years to complain from the point they became aware (or ought reasonably to have become aware) that there was cause for complaint.

ABIM has pointed out that its “Financial Planning Report”, dated 20 January 2010, made reference to Miss P retiring in “11 years time”, which would have been around January 2021 when she would have been around 55 years old. ABIM has argued Miss P would have considered her pension in some detail when she reached that point. In its view, this would have prompted her to consider the suitability of ABIM’s advice and given her three years – until January 2024 – to complain. As she didn’t complain until October 2024, ABIM’s view is that the complaint was made too late even after allowing for the three-year part of the rules.

I disagree. Firstly, retiring around January 2021 doesn’t appear to have been central to Miss P’s thinking. Yes, the Financial Planning Report does make reference to Miss P retiring at this point. But it’s just the one reference. There are more references to retiring later on, in 2030 at age 65, including the critical yield calculations (more on which below) and retirement projections for Miss P’s personal pension, which run to age 65. Similarly, the fact-find doesn’t record Miss P wanting to retire early – indeed, her “intended final retirement age” is recorded as being 65.

It’s evident from the documentation from the time that the prompt for Miss P taking advice was the enhancements to her transfer value that were being offered to her by her occupational scheme, and whether it was advisable for her to transfer her pension in light of those enhancements. Miss P wasn’t seeking out advice in order to retire at age 55:

*“Client is offered an enhanced transfer option for her pension and this has prompted the meetings.” [Fact-find, 15 January 2010]*

*“You have specifically requested that I focus my advice on the following:*

*To consider your preserved defined benefit scheme and the enhanced transfer offer provided by the Trustees of [Miss P’s occupational scheme] and to look at contributing £200 gross per month to a pension plan.” [Financial Planning Report, 20 January 2010]*

With all this in mind, I’m satisfied January 2021 *wasn’t* the prompt for Miss P to review her retirement benefits that ABIM has argued. I think it’s also worth noting how ABIM has framed its argument, which is as follows:

*“The fact-find and suitability report, taken together, reflect that the advice was tailored to [Miss P’s] **potentially expressed objective** of retiring at age 55 – not 65. This was in **keeping with prevailing retirement trends and possibly orally stated intentions at the time.**” [my emphasis].*

My decision doesn’t turn on how ABIM has articulated its arguments. But I think the tentative nature of its phrasing bolsters what I said previously about Miss P’s desire to retire at 55 being far weaker than ABIM has suggested.

ABIM has also pointed to Miss P withdrawing tax-free cash in 2020 – its argument being that Miss P was “actively engaging” with her pension arrangements at this point and, in so doing, would have (or should have) compared her existing pension with the pension she would have received had she not transferred.

Taking tax-free cash is a likely prompt to review overall retirement provision. In that respect, ABIM has made a valid point. However, it doesn’t follow that someone reviewing their pension arrangements would necessarily then compare their retirement provision with what

they would have had but for the advice they received a number of years previously (ten years previously in this case). That wouldn't be a natural progression unless there was some further prompt to make someone think their advice had been unsuitable.

There isn't anything to make me think such a prompt was present here. Miss P's Financial Planning Report from 2010 said if she remained in her occupational scheme, she would have a pension of £8,395 p.a. at the age of 65 (in 2030), with tax free cash of £55,968. Instead, Miss P transferred her pension and took tax free cash of just over £37,000 in 2020 at the age of 55. This left her with around £120,000 invested. Whilst it's true that her tax-free cash was less than the amount her suitability report said she would have had with her occupational scheme, I don't think it was so much lower that she would have thought her advice might have been unsuitable, especially when one considers she was taking her tax-free cash ten years earlier than indicated in that report. And as she hadn't taken income from her pension beyond the tax-free cash, there wouldn't have been a prompt for her to compare the retirement incomes of her old and new schemes (and even if she had, like-for-like comparisons would have been difficult).

Clearly, Miss P wouldn't have had an awareness of there being a potential problem with the advice at the time it was given – she wouldn't have transferred had that been the case. And there hasn't been sharp or significant falls in the value of the personal pension funds Miss P transferred into which could, potentially, have prompted her to have questioned the advice that led to her being invested in those funds. So I can't see anything that happened prior to October 2021 – three years before she complained – that makes me think Miss P would have considered the advice she had been given was potentially unsuitable.

So, all things considered, I'm satisfied the complaint was made in time. With that in mind, I'll go on to look at whether ABIM did anything wrong when advising Miss P.

#### The applicable rules, regulations and requirements

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice but provides useful context for my assessment of ABIM's actions.

- Principle 2 – A firm must conduct its business with due skill, care and diligence;
- Principle 6 – A firm must pay due regard to the interests of its customers and treat them fairly;
- Principle 7 – A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading;
- COBS 2.1.1R (the client's best interests rule), which states that a firm must act honestly, fairly and professionally in accordance with the best interests of its client;
- COBS 9, which deals with the obligations when giving a personal recommendation and assessing suitability; and
- COBS 19, which specifically relates to pension transfers, including COBS 19.1.6G which states that the starting assumption for a transfer from a DB scheme is that it is unsuitable.

With the above in mind, ABIM should have only considered a transfer if it could clearly demonstrate that the transfer was in Miss P's best interests. Having looked at all the evidence available, I'm not satisfied that was the case here.

### Was ABIM's advice suitable?

ABIM carried out analysis showing how much Miss P's pension fund would need to grow by each year in order to provide the same benefits as her DB scheme (the critical yield).

The prompt for Miss P taking advice was the enhancements to her transfer value offered to her by the trustees of her DB scheme, and whether it was advisable for her to transfer her pension in light of those. Miss P was approaching the age of 45 at the time of the advice. The critical yield required to match Miss P's DB benefits at age 65 (taking into account her enhanced transfer value) was 8.15% p.a. without tax free cash or 7.3% p.a. with tax free cash. The latter is the most reasonable figure to use as most consumers want to minimise their tax liability in retirement. ABIM summed the situation up thus:

*"Using the full enhanced transfer value for assessment, the critical yields are 8.15% with no tax-free cash, or 7.3% with.*

*Therefore in conclusion this shows that in order to match the benefits that will be provided by your existing scheme, you will require an annual yield, or investment growth of 7-8%. With your attitude to investment risk and 11 years to retirement this is achievable."*

(As an aside, this is the paragraph that ABIM has referred to when arguing Miss P was intending to retire early and ought, therefore, to have complained earlier than she did.)

The advice was given during the period when the Financial Ombudsman Service was publishing 'discount rates' on our website for use in loss assessments where a complaint about a past pension transfer was being upheld. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, I consider they provide a useful indication of what growth rates would have been considered reasonably achievable when the advice was given in this case.

The critical yield figures compare with a discount rate of 6.7% p.a. for 20 years to retirement. For further comparison, the regulator's upper projection rate at the time was 9% p.a., the middle projection rate was 7% p.a. and the lower rate was 5% p.a.

Miss P was assessed as having a 'low/medium' attitude to risk (alternatively: 5 on a scale of 1 to 10). Her critical yield of 7.3% p.a. was therefore higher than the investment returns she could, reasonably, have expected to achieve by transferring, which were somewhere in the region of 5 to 7% p.a. As such, I think Miss P was likely to receive benefits of a lower overall value than her DB scheme at retirement. I also note here that in the absence of any other compelling reasons for transferring, there would have needed to have been a reasonable prospect of Miss P *exceeding* the critical yield in order for the transfer to be suitable because there would be little point in her giving up the guarantees available to her through her DB scheme only to achieve broadly the same level of benefits outside the scheme. In other words, there would need to be some "daylight" between the returns Miss P could reasonably have expected to have achieved and the critical yield. I don't consider that to have been a realistic prospect here.

It's worth noting at this point that the fund value and pension projections in the Financial Planning Report make the transfer appear more favourable than it really was because they included an assumption for escalating contributions into the personal pension starting at £200 per month. So these projections aren't a like-for-like comparison with the DB scheme and don't, therefore, make the transfer more financially viable than indicated by the critical yield calculation.

Of course, financial viability isn't the only consideration when giving transfer advice. There

might be other considerations which mean a transfer is suitable, despite providing overall lower benefits.

However, ABIM's report didn't give any other substantive reason for recommending the transfer. It set out some of the advantages of a personal pension arrangement. But none of these were given as reasons for recommending Miss P's transfer. Some of the benefits of the recommended personal pension were also listed. But those benefits don't, in themselves, explain why transferring to a personal pension was suitable in the first place. There's also a reference in the report to Miss P being able to be involved in investment decisions which she wouldn't have been able to do had she remained in her DB scheme. But, again, there's nothing to indicate why this would have been of particular interest to Miss P and I haven't seen anything to suggest this would have been reason enough for her to have wanted to give up valuable benefits.

ABIM's Financial Planning Report also makes the point that transferring would have allowed Miss P to benefit from an enhanced transfer value. Whilst true of course, that wasn't reason enough to recommend the transfer. Benefiting from an enhanced transfer value that otherwise would be lost doesn't automatically make an unsuitable transfer suitable.

The fact that ABIM considered the critical yield as being achievable may well explain why it didn't fully explore "other" reasons for recommending the transfer. Or, maybe, ABIM didn't think those other reasons were present. For the record, I can't see any other compelling reasons for transferring, or why Miss P would have considered it in her best interests to do so, given her circumstances, attitude to risk and capacity for loss. It means the advice to transfer wasn't suitable. It wasn't financially viable and no other compelling reasons for transferring were present.

Finally, ABIM has argued Miss P made an informed decision to transfer because its report set out the features of her occupational pension scheme and of different types of personal pensions, along with the advantages and disadvantages of transferring and various risk warnings. But such an argument rather misses the point. ABIM needed to meet Miss P's information needs *and* provide suitable advice.

#### Would Miss P have insisted on a transfer if advised against it?

For the reasons given above, I don't think the advice given to Miss P was suitable. The transfer wasn't financially viable because Miss P was unlikely to have been in a better position financially as a result of transferring and there were no other compelling reasons to justify the transfer.

ABIM should therefore have advised Miss P to remain in her DB scheme. If it had done so, I'm satisfied she wouldn't have gone against that advice and insisted on transferring. I say this because Miss P's advice was prompted by the offer of an enhanced transfer value rather than because she otherwise had a need (or perceived need) to transfer or had any demonstrable interest in doing so. So if ABIM had provided her with advice against transferring out of the DB scheme, and explained clearly why it wasn't in her best interests, I think she would have accepted that advice. It follows that I uphold Miss P's complaint.

#### **Putting things right**

A fair and reasonable outcome would be for ABIM to put Miss P, as far as possible, into the position she would now be in but for the unsuitable advice. I consider she would have likely remained in the occupational scheme.

ABIM should therefore undertake a redress calculation in line with the rules for calculating

redress for non-compliant pension transfer advice, as detailed in Policy Statement PS22/13 and set out in the regulator's handbook in DISP App 4.

For clarity, Miss P has not yet retired, and she has no plans to do so at present. So, compensation should be based on the scheme's normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

This calculation should be carried out using the most recent financial assumptions in line with PS22/13 and DISP App 4. In accordance with the regulator's expectations, the calculation should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Miss P's acceptance of this decision.

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

- calculate and offer Miss P redress as a cash lump sum payment,
- explain to Miss P before starting the redress calculation that:
  - redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
  - a straightforward way to invest the redress prudently is to use it to augment the current defined contribution pension
- offer to calculate how much of any redress Miss P receives could be used to augment the pension rather than receiving it all as a cash lump sum,
- if Miss P accepts ABIM's offer to calculate how much of the redress could be augmented, request the necessary information and not charge Miss P 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 Miss P's end of year tax position.

Redress paid directly to Miss P 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), ABIM may make a notional deduction to allow for income tax that would otherwise have been paid. Miss P'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.

Where I uphold a complaint, I can award fair compensation of up to £195,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £195,000, I may recommend that the business pays the balance.

**Determination and money award:** I require ABIM to pay Miss P the compensation amount as set out in the steps above, up to a maximum of £195,000.

**Recommendation:** If the compensation amount exceeds £195,000, I also recommend that ABIM pays Miss P the balance.

If Miss P accepts my decision, the money award is binding on ABIM. My recommendation is

not binding on ABIM. Further, it's unlikely that Miss P can accept my decision and go to court to ask for the balance. Miss P may want to consider getting independent legal advice before deciding whether to accept this decision.

### **My final decision**

For the reasons explained above, I uphold Miss P's complaint and require Alexander Beard Investment Management Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 19 January 2026.

Christian Wood  
**Ombudsman**