

## The complaint

Mr B complains that Alexanders gave him unsuitable advice in 1998 to transfer the defined benefits held in an occupational pension scheme ('OPS'). He says that he will likely suffer a loss in retirement benefits.

## What happened

In 1998 Mr B received a recommendation, from Alexanders, that he transfer his OPS to a section 32 pension, which was a type of pension intended to receive OPS transfers and offer a guaranteed minimum pension ('GMP'). He was 26 years old at the time.

Alexanders wrote to him in October 1998 and explained that the critical yield – the investment returns needed each year in order to provide the same benefits as his OPS – was around 8.8%. It explained that Mr B would receive lower retirement benefits if the investment returns were below that.

Mr B complained to Alexanders in April 2024. He says that he was prompted to complain when he met a former colleague and discussed their pensions.

Alexanders didn't think that its advice had been unsuitable and didn't uphold his complaint. It considered that, based on the recent investment returns of the time, the critical yield would have been considered achievable. It explained that it was no longer able to locate any documentary evidence of the advice it had given to Mr B.

I issued a provisional decision to let Mr B and Alexanders understand why I didn't think that his complaint should be upheld. In summary, my reasons for coming to that conclusion were:

- I explained that the evidence that was still available after so long a time was limited. I did not, for example, have sufficient evidence to be able to determine whether or not Mr B was likely to have suffered a financial loss.
- The information that was available suggested that the critical yield – the annual investment return needed for the transferred fund to be able to match the benefits in the OPS – was 8.8% a year.
- I noted that, at the time the advice was given, the Industry projected rates were 6% for low investment returns, 9% for medium investment returns and 12% for high investment returns. So the critical yield was below the medium projection.
- I noted that the term to retirement, at around 38 years was long. And concluded that, on balance, it wasn't obviously unsuitable for Alexanders to have concluded that the investment return may have been in Mr B's interests.

Mr B didn't accept my decision. He obtained further information about the current value of his pension, past statements, and provided me with a benefit statement from the OPS prior to transferring. Which he explained demonstrated that he was worse off at having transferred. He also referred me to other Ombudsman decisions in cases where he

considered the circumstances were similar. Yet those cases gave different outcomes.

### **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.

I thank Mr B for the additional information and his patience while I have considered this. I understand that, whilst he does not yet know what type of retirement benefits he may end up with, it is evident from his pension statements, that he has not received annualised returns that have matched the critical yield. So I can see that he is likely to end up being worse off at the point of taking benefits. However, I am not assessing the advice he received in hindsight. Rather, I have to consider the rules and regulations at that time, and consider whether, based on the environment in 1998, Alexanders' advice was, on a balance of probability, unsuitable. The evidence that he has provided doesn't shed any different light on those factors, so has not changed my mind. Whilst I agree that this case is finely balanced, overall, I am not persuaded that Alexanders' recommendation was unsuitable.

The evidence that I have of Alexanders' recommendation comes from the letter that Mr B provided. It is dated 1 October 1998. Mr B signed the declaration on that letter on 13 October 1998. It confirmed that he had read and fully understood the contents of the letter and the transfer analysis report. He has not provided the transfer analysis report that I think he was also likely to have been provided, and as I explained above, Alexanders can no longer provide it. This was likely to have included key information such as: the benefits Mr B was giving up in his OPS; the cash equivalent transfer value of the OPS; the assumptions used in estimating the critical yield.

As I explained in my provisional decision, the evidence in this case is unfortunately limited. Which can be the case where a complaint is referred 28 years after the advice in question. Where information is limited, I need to determine what likely happened on a balance of probability. And, in considering Alexanders' advice, I need to consider the regulatory responsibilities on it at the time. A fair and reasonable assessment of this complaint means deciding whether Alexanders recommendation was likely to have been suitable based on what it was reasonable of it to assume at the time.

The regulatory framework regarding transfers of defined benefit OPSs was very different in 1998 than today. And has changed in stages over the intervening time. The other ombudsman decisions that Mr B has brought to my attention have, in my view, different circumstances. And occur at different points in time when the environment was different. For example, the Industrywide projection rates for low, medium and high investment returns were revised down.

In 1998 the Personal Investment Authority (PIA) was the regulatory organisation for the investment industry. The guidance on transfers of deferred OPS benefits did not, at that time, include a presumption that it would be unsuitable. That would not be introduced until later regulation. It did point out to advisers that the position was likely to be finely balanced and set out what should be considered. The advice should, above all, have been suitable for Mr B. Which means that it should have aimed to meet his objectives.

From the limited information available, Alexanders' recommendation seems to be based on the premise that Mr B could provide him with better benefits in retirement. It had evidently assessed his circumstances and he was, at that time single with no financial dependants. But I do not think those circumstances would support a transfer of benefits because he was so far from retirement. His circumstances were likely to change before taking benefits.

The suitability report referred to his options as being to leave his benefits with his OPS or to transfer to a money purchase pension, such as a personal pension or Section 32 Buy-Out pension. I think that it was therefore open to and considering his range of options.

Alexanders referred to the critical yield as being an 'essential fact' in determining suitability. Which leads me to conclude that its main consideration in making its recommendation was its assessment of whether Mr B was likely to be better off in retirement by transferring and investing his cash equivalent transfer value of his OPS. Although I do not have the transfer analysis document that Alexanders did, it is referred to in the recommendation letter and so I am persuaded that it was done and shared with Mr B. And the critical yield figures from it are in the recommendation letter. Alexanders explained that the critical yield was around 8.66% for a transfer to a personal pension, and 8.71% to a pension transfer plan. It explained that it considered the latter to be more suitable because of the guarantees that it offered in the form of a Guaranteed Minimum Pension. And it recommended the transfer to a Section 32 plan based on that.

For Mr B's complaint to succeed, I need to decide that it was unreasonable for Alexanders, in October 1998, to consider that a return in excess of 8.8% could realistically be achieved in a pension.

At that time however, the Industry projected rates were 6%, 9%, 12% for low, medium and high rates of return respectively. So 8.8% sat below the middle rate. Alexanders has, in its representations to our service, referred to these rates as being those that it was permitted to use in order to determine a realistic expectation of growth rates at that time. And I think that, on balance, that was not an unreasonable position for it to take.

Whether it would be suitable would also depend on other factors. The term to retirement would need to be long enough to provide a sufficient investment period. Which, at 38 years, I think it was. Mr B would need to have at least a medium attitude to risk or maybe higher to give him a chance of the necessary investment returns to give him better benefits in retirement. I have no information about that from the time and it is not possible to reliably estimate what Mr B's attitude to risk was by asking him 28 years later. But, ordinarily speaking, I would normally say that it was not unsuitable for someone with that investment term to take a medium attitude to risk in order to achieve the required investment growth. So I can't reasonably say that it wasn't suitable for Mr B to take that level of investment risk. And with the number of years remaining to retirement he had the time to continue to make provision for his retirement and therefore recover from any investment losses. So he likely had capacity for loss.

Alexanders identified that the critical yield would have been lower for a personal pension. Yet considered that the additional protections that the section 32 pension offered for an OPS transfer was valuable. It meant that there would be a GMP and spouse benefits which would be more suitable than an alternative personal pension. So I think that was a suitable recommendation too. Those types of plans existed for that purpose.

## **Summary**

I understand Mr B's concerns that financial markets may not have performed in the way that the industry expected in 1998. I need to consider whether the advice he was given to transfer was unsuitable based on what it was fair and reasonable to expect at the time. I think that the required critical yield means that the suitability of the advice at the time was finely balanced. But it isn't enough evidence by itself to persuade me, on a balance of probability, that it was clearly unsuitable to advise Mr B to transfer his pension.

**My final decision**

For the above reasons, I am not upholding Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 16 January 2025.

Gary Lane  
**Ombudsman**