

## **The complaint**

Ms A says the advice given by Better Retirement Group Ltd (BRG) to transfer her occupational pension scheme (OPS) benefits, into a Self-invested Personal Pension (SIPP) with Momentum Pension Ltd (MP) and invest in the SVS Securities (SVS) aggressive portfolio overseen by SVS's discretionary fund management (DFM), was unsuitable.

Ms A is represented by Clarke Willmott LLP (CW).

## **What happened**

Following being made redundant in 2012, Mr Z was recommended to Ms A to provide her with financial advice. He was a non-regulated adviser who acted as an introducer. In 2016 he began an association with Fiducia Wealth Solutions Limited (FWS).

In November 2016, Ms A met with Mr Z to discuss retirement and investment planning. Her dealings with FWS appear to have been at arms-length. She didn't meet with its advisers and any communications were in writing. Instead she met with Mr Z and he gathered information and acted as a conduit between her and FWS.

Ms A accepted a recommendation from FWS in December 2016 to move an existing Individual Savings Account (ISA) fund worth around £74,000 to a new provider – SVS.

Between December 2016 and June 2017, Ms A had several meetings with Mr Z at her home – the focus being on her pension provision. He was persistent in encouraging her to make new arrangements.

Ms A was a member of an OPS with deferred benefits. She'd accrued 8 years of qualifying service with a former employer. This had a transfer value of around £126,000. She also had a personal pension with Liverpool Victoria (LV) worth around £169,000.

Ms A says Mr Z told her that OPS were becoming risky, and the pension pots were diminishing. On the other hand, he described very promising returns on her retirement funds if she took out a SIPP. She trusted what Mr Z and FWS told her.

As an aside, I should note that in August 2019, SVS Securities was placed into special administration following intervention by the Financial Conduct Authority (FCA). Further, FWS went into liquidation in June 2020. And I understand the Financial Services Compensation Scheme (FSCS) are accepting certain claims against it.

It's of note that FWS wasn't authorised by the FCA to provide advice about the transfer of OPS benefits. So, it contracted with BRG to deliver that expertise, this included the production by it of a pension report.

My decision here only concerns the acts and omissions of BRG in relation to the transfer of Ms A's OPS benefits. I appreciate she may have concerns about what happened to her ISA and her personal pension, and how her funds were managed. But those matters will need to be pursued separately, recognising the status of the entities involved.

BRG gathered information about Ms A's circumstances, objectives and matters such as her attitude to risk. It contacted FWS in May 2017 to clarify certain matters. This included trying to understand what her objectives were, since this wasn't clear from the fact-find. FWS responded in the following terms:

*"[Ms A has no confidence in her ex employer and wants to break all ties. Whilst she is not yet 55, she will probably want to access tax free cash to use and add to her property portfolio. She is more interested in having the flexibility to control the way benefits are taken and when, she also wants to maximise the tax free lump sum and have the ability to retire much earlier than the scheme allows.]"*

BRG produced a pension report dated 8 May 2017, which recommended Ms A proceed with the transfer of her OPS benefits. Ultimately she was persuaded by the advice. She signed the necessary paperwork and the transaction was completed in August 2017. The funds were placed in a MP SIPP and invested in a SVS aggressive portfolio overseen by the SVS DFM arrangement.

CW, on behalf of Ms A, complained in May 2020 to BRG about what had happened in 2017. It said BRG failed to meet the regulatory obligations placed on it when advising someone about transferring their OPS benefits. It didn't think it had gathered all the necessary information about her to provide her with best advice. It thought its communications were not clear, fair and were misleading.

Ms A also noted that she had little experience of pensions and investments. She believes the risk assessment was flawed – see doesn't believe she had an aggressive appetite. She says that since problems with her pension provision have emerged she's been worried about the implications. Ms A says that had she been given proper advice she'd have remained a member of her OPS.

BRG sent its response to CW in June 2020. It set out what it considered to be the limited scope of its involvement. It concluded in the following terms:

*"We did not provide your client with financial advice, we stand by our pension transfer analysis and [the] recommendation, [which] reflect her personal circumstances as provided to us by FWS and confirmed by ourselves."*

*"The recommendation that a transfer wouldn't be inappropriate was set against the starting assumption that for most members given their personal financial circumstances the greater likelihood of a lifetime income from an [OPS] would urge against a transfer."*

*"In [Ms A's] circumstance such concerns were not prevalent and therefore as long as the transfer analysis gave a positive result based on conservative assumptions, we were happy to support the transfer in our report to FWS and [Ms A]."*

The Investigator recommended that Ms A's complaint should be upheld. She wasn't persuaded that BRG had demonstrated the transfer of her OPS benefits was demonstrably in her best interests as it was required to do.

BRG disagreed. It set out its relationship with FWS, the process it followed and the expertise of its advisers. It explained why it maintained that the transfer was suitable for Ms A in her circumstances. And it noted that both FWS and SVS had misled it and the regulator concerning how underlying investments would be managed.

As both parties couldn't agree with the Investigator's findings, Ms A's complaint has been passed to me for review. I issued my provisional decision last month. Ms A provided some further thoughts but these haven't caused me to change my main findings and conclusions.

## 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.

Where there's conflicting information about what happened and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what's most likely to have happened.

I've not provided a detailed response to all the points raised in this case. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've taken into account all submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

I'm upholding Ms A's complaint. I'll explain why.

### *How does the regulatory framework inform the consideration of Ms A's case?*

The first thing I've considered is the extensive regulation around transactions like those performed by BRG for Ms A. The FCA Handbook contains eleven Principles for businesses, which it says are fundamental obligations firms must adhere to (PRIN 1.1.2 G in the FCA Handbook). These include:

- Principle 2, which requires a firm to conduct its business with due skill, care and diligence.
- Principle 3, which requires a firm to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
- Principle 6, which requires a firm to pay due regard to the interests of its customers.

So, the Principles are relevant and form part of the regulatory framework that existed at the relevant time. They must always be complied with by regulated firms like BRG. As such, I need to have regard to them in deciding Ms A's complaint.

At the time of the advice BRG gave Ms A, COBS 19.1.6 made the following specific point about advising on a transfer from OPS schemes (bolding is my emphasis):

*"When advising a retail client who is...a member of a defined benefits occupational pension scheme...with safeguarded benefits whether to transfer...**a firm should start by assuming that a transfer...will not be suitable. A firm should only then consider a transfer...to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer...is in the client's best interests.**"*

Under COBS 19.1.2, BRG was required to:

- Compare the benefits likely to be paid under the ceding arrangement with the benefits afforded by the proposed arrangement.
- Ensure that the comparison included enough information for Ms A to be able to make an informed decision.
- Give Ms A a copy of the comparison, drawing her attention to the factors that do and don't support its personal recommendation, in good time.
- Take reasonable steps to ensure that Ms A understood its comparison and how it contributed towards the personal recommendation.

In simple terms, BRG had to assess the benefits likely to be paid and options available under the OPS and compare this with those available under the new arrangements proposed before it advised Ms A on what to do.

COBS 9.2.1R sets out the obligations on firms in assessing the suitability of investments. They are the same things that I look at when reaching a decision about whether the advice was suitable. In summary, the business must obtain the necessary information regarding: the consumer's knowledge and experience in the investment field relevant to the advice; their financial situation; and their investment objectives.

It's also important to review the FCA's specific stance on advice provided about SIPP's. For example, in January 2017 it issued an industry alert which said:

*"We are aware that some firms have been advising on pension transfers or switches without considering the assets in which their client's funds will be invested. We are concerned that consumers receiving this advice are at risk of transferring into unsuitable investments..."*

*"Transferring pension benefits is usually irreversible. The merits or otherwise of the transfer may only become apparent years into the future. So it is particularly important that firms advising on pension transfers ensure that their clients understand fully the implications of a proposed transfer before deciding whether or not to proceed."*

*"We expect a firm advising on a pension transfer from a defined benefit (DB) scheme or other scheme with safeguarded benefits to consider the assets in which the client's funds will be invested as well as the specific receiving scheme. It is the responsibility of the firm advising on the transfer to take into account the characteristics of these assets."*

*"Our rules set out what a firm must do in preparing and providing a transfer analysis. In particular, our rules (COBS 19.1.2R(1)) require a comparison between the benefits likely (on reasonable assumptions) to be paid under a DB scheme or other scheme with safeguarded benefits and the benefits afforded by a personal pension scheme, stakeholder scheme or other pension scheme with flexible benefits."*

*"The comparison should explain the rates of return that would have to be achieved to replicate the benefits being given up and should be illustrated on rates of return which take into account the likely expected returns of the assets in which the client's funds will be invested. Unless the advice has taken into account the likely expected returns of the assets, as well as the associated risks and all costs and charges that will be borne by the client, it is unlikely that the advice will meet our expectations..."*

*Did BRG adhere to the regulatory requirements placed on it when advising Ms A?*

In short, I don't think BRG met the regulatory requirements placed on it. I'll explain why.

There are several documents relating to BRG's transaction with Ms A that are important to my consideration, these include the fact-find, the pension transfer report and the suitability report. I've thought carefully about the testimony of both parties and other communications such as the email exchanges with third parties.

The regulatory position sets a high bar, which BRG must be able to *clearly* demonstrate was met, on contemporary evidence, that the transfer was in Mrs G's best interests. I'm not satisfied it's managed to do this in the circumstances of this case.

At the time of the advice Ms A was 53. She was single and had no financial dependents. She was in good health. She had a role as a buyer and earned about £25,000 a year. She also received around £15,000 a year from her investments. She had a monthly net

disposable income of £1,500. Ms A owned her own home, which was worth around £180,000. She had an outstanding mortgage of about £14,000.

She had six buy-to-let (BTL) properties, which she'd inherited from her father. One of the properties had an endowment mortgage. The portfolio was worth in the region of £800,000. Ms A doesn't appear to have had any other liabilities. Her other assets included cash and savings worth around £174,000.

Ms A's pension provision included a personal plan with LV worth around £169,000. And she had her OPS benefits worth around £126,000. She planned to retire at 60. Her required income in retirement was recorded as unknown. But her entitlement to a state pension, her savings and assets were noted as potential sources to support her in retirement. Her life expectancy was said to be 85.

BRG were informed Ms A's objectives in this transaction including breaking all ties with her former employer, which she was said to have no confidence in. She *probably* wanted to access tax-free cash (TFC) when she reached 55, which she wanted to maximise and use to add to her BTL properties. She wanted flexibility to control her pension benefits and be able to retire much earlier than her OPS allowed.

Ms A says these objectives were things suggested to her by Mr Z. She says trade-offs were never explored. She had no reason to distrust her previous employer at all. She says she could've achieved income flexibility using her existing savings. She says she never discussed her objectives with an authorised adviser prior to transferring. She says it wasn't one of her objectives to obtain TFC.

Ms A's position appears to be weakened by the existence of documents such as the pension report, which contained the information she now refutes. That begs the question why she didn't challenge it at the time. I place more weight on evidence contemporaneous with the events complained about because I find it tends to provide a more accurate picture.

That said, I note that the job done by Mr Z and FWS to understand and record Ms A's objectives was poor. I say this because BRG had to ask what the rationale for the transfer was – it wasn't clear from the information gathered up to that point. And this should've set alarm bells ringing.

But rather than exploring matters further or engaging directly with Ms A, BRG appears to have simply reflected what it was told. That must be the case because the email exchange with FWS on this matter happened the same day it produced her pension report in May 2017.

Further, turning to the substance of what Ms A's objectives were, they don't appear particularly compelling. For example, it was said she would *probably* want to use TFC *when she was 55*, to increase her already significant property portfolio.

And I think Ms A's point about already having sufficient flexibility in terms of income in retirement given her asset and investment holdings at the time to be another strong argument, which appears to undermine what was recorded about her objectives.

There's no record of what income Ms A would need or target for retirement. I've seen no evidence of an attempt by BRG to get to the bottom of this key question. I think this would've been important to her being able to take an informed view about the transfer of her OPS benefits. BRG hasn't done enough to satisfy me the process it followed was thorough, and therefore fair.

BRG was in a good position to have analysed, tested, challenged and advised Ms A about what was in her best interest for retirement planning. It knew pension pots built up over many years are to provide for retirement. And certainly when early access to benefits are recommended there need to be compelling reasons. That's not the case here based on the available evidence.

It was BRG's role to discern what Ms A's wants and needs were and why. Its role wasn't simply to facilitate what it thought she wanted without any critical thinking. And it wasn't providing a basic transactional service to FWS. It had to use due care and skill. It had to do these things because it had to act in her best interests. It hasn't demonstrated that it met these obligations.

Turning to the financial case for this transaction. The critical yield is the level of returns Ms A's new SIPP would need to have achieved in order for the transfer to match her OPS pension benefits at retirement (aged 60). The pension transfer report indicated that an annual return of not less than 16.98% would be required (assuming that all her benefits were taken as a pension).

BRG's advice was given during the period when this Service published '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, I consider they provide a useful indication of what growth rates would've been considered reasonably achievable when the advice was given in Ms A's case.

The critical yield required to match Ms A's OPS benefits was 16.98%. When the advice was given, the relevant discount rate was 3.3% per year for 6 years to retirement. For further comparison, the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2% per year.

The comparable growth rates this Service used were based on a typical investment spread across shares and bonds. So, it's arguable that if Ms A had a high appetite for risk, the investment portfolio selected in that case might've had an outside chance of big returns. But even then this would've been unlikely to bridge such a major gap.

BRG says it did not use the critical yield analysis in its advice. Instead it produced a cash flow analysis to show how long Ms A's funds would last, based on certain assumptions such as her life expectancy and at different growth rates. The modelling suggested that with a 5% return, if she were to drawdown benefits equivalent to those it projected from her OPS, her pot could last until she was 89.

It's not unreasonable to use cash flow models. I accept they can help customers understand benefits more practically. But clearly much depends on the data and assumptions used. Having considered the results produced by BRG's report I don't find the results for Ms A's case showed it was demonstrably in her best interests to transfer.

I can see that to arrive at its main outcome some remodelling of the input data was required – the following message between FWS and BRG from May 2017 speaks to this:

*"[Ms A's OPS provider is] not generous with their [transfer values]. With this one in particular because she left some time ago and her [guaranteed minimum pension (GMP)] is quite large to get the math to work I have had to rather cut back on the commissions. With big GMP cases and leaving in the 90's the GMP fixed revaluation rate is/was 7%. This has caused the deferred pension at exit to more than treble by [normal retirement date]. To get to the [life expectancy plus five years] we need to agree the transfer I have had to take the initial fee*

*down to £2k and just a quarter trail [0.25%] and, again to go into the cheaper Intelligent Money wrapper.”*

While fees were altered in the model to make the case for transfer, I can't see how these adjustments aligned with the fees that Ms A ended up paying. The suitability report FWS sent her on 19 January 2018 – leaving aside the fact this came several months after the advice and transfer had been effected which is a serious flaw in its process – shows fees for its ongoing advice of at least 0.5% per annum; SIPP fees; fund annual management charges of 1%; and DFM costs.

I think BRG needed to have been more transparent about the fees and charges she would be incurring and the impact of these on the illustrations she was provided.

The life expectancy calculations used by BRG indicated Ms A had a life expectancy of 85, it added five years to this as a threshold for modelling purposes. I can see from reviewing information from the Office for National Statistics website published in January 2016 indicated that someone of her age had an average life expectancy of 88 years. She had a one in four chance of reaching 97 and a one in ten chance of reaching 102.

I think BRG needed to be clear with Ms A that there was a significant possibility that if she went into drawdown this element of her pension pot could be exhausted before she passed. I don't think Ms A was an investment professional or a sophisticated investor. But she did have some knowledge of investments. This is important context when I consider what happened to her.

There are some oddities when it comes to how FWS assessed Ms A's appetite for risk. The assessments over a short period of time vary on a scale of 1 to 10, from between 6 and 8. These are significant differences.

For example, on the fact-find from November 2016 I can see 'high-risk' level eight is circled, presumably by the adviser at FWS. But by December 2016, when it was advising on the switch of her ISA provider the following extract from the suitability letter is instructive:

*“The above funds were recommended based on the level of risk you are prepared to accept. This was identified and agreed following completion of a risk profiling questionnaire. You had indicated your risk level was a 7 (Highest medium risk). However, after running the questionnaire and further assessment, your risk level for the investment was confirmed as a level 6 (High medium risk). This is confirmed after processing the risk questionnaire you completed...You have also confirmed that you have a fair degree of knowledge and understanding with regards to investments.”*

I've also seen a risk assessment form which Ms A signed off on 7 April 2017. This again confirmed her appetite for risk at level 6 – high medium risk. But a month later, BRG's suitability report is based on a level 7 risk appetite – highest medium risk. And it endorsed an investment strategy based on such. Its suitability report said (bolding is my emphasis):

*“Having received independent financial advice from Fiducia, you are planning to transfer your funds into a [SIPP] with Momentum Pensions Ltd...Once your fund is in the [SIPP] your funds will be invested into the SVS Securities Aggressive portfolio.”*

*“SVS Securities Plc are acting on your behalf as a discretionary fund manager...”*

*“We confirm that this investment strategy is commensurate with the risk profile and capacity for loss assessments that have been assessed for you. We would also confirm that this investment strategy is appropriate for the required level of returns to ratify the decisions we have made within this report. **Should you choose to move away from this investment***

***strategy this would most certainly adversely affect our recommendations detailed within this report.”***

I don't know why BRG used the wrong attitude to risk assessment from FWS. I don't know how closely it consulted that firm. It's not clear to me it had any direct dealings with Ms A at all. The business model it adopts is of course a matter for it. But clearly there are risks when the client for an important piece of work is at arms-length. It's also clear from what BRG said at the time this issue would've undermined the advice it gave.

While I recognise Ms A didn't pick up on this error, assuming she received a copy of the pension report, it was a rather technical document. And for some reason she didn't receive FWS's suitability letter until the following year after the transaction had been completed.

More generally, I'm not satisfied that Ms A was properly informed that by moving away from her OPS scheme and using the funds to invest, she was moving from a situation where her former employer was bearing the risks related to the provision of her retirement income to one where she was taking on that risk.

I think BRG is right when it says Ms A had good capacity for loss. She had various significant assets to fall back on. But that didn't mean that she should or wanted to take unnecessary risks. I note that she'd already been persuaded by FWS to switch her personal pension funds into the same arrangement proposed for her OPS benefits.

*Even if* there had been any merit in exposing some of her pension provision to higher risk funds, it's difficult to understand the justification for moving all her pension funds into the same basket. A more balanced approach would've been to have retained her OPS benefits, which enjoyed guarantees and protections, offsetting risks she was taking elsewhere and providing a more diversified set of assets.

It's arguable BRG seemed more concerned with fulfilling a contract with FWS for pension transfer expertise than providing effective advice about what was in Ms A's best interests concerning her valuable OPS benefits. It hasn't done enough to satisfy me that the transaction was demonstrably in her best interest.

Overall, I think BRG should've provided Ms A with an explicit recommendation not to proceed with the transfer of her OPS benefits into the SIPP, to invest in funds that were beyond her risk appetite. I think that if BRG had given Ms A appropriate advice, she wouldn't have gone ahead with the transfer.

To conclude I don't think the transfer of Ms A's pension funds could sensibly be regarded as fair to her. As such I think BRG failed to meet the regulatory requirements when providing her with advice. So, taking all the circumstances of the case into account, it's reasonable to uphold this complaint against BRG and for it to put things right.

### **Putting things right**

I'm upholding Ms A's case. So, she needs to be returned to the position she would've been in now - or as close to that as reasonably possible – had it not been for the failures which I hold Better Retirement Group Ltd responsible for.

If BRG had done everything it should've, I don't think Ms A would've transferred her OPS benefits, into a SIPP with MP and invest in the SVS Securities (SVS) aggressive portfolio overseen by a DFM. And she wouldn't have suffered the financial loss she's facing. I think it's most likely she would've left her pension where it had been.



So Better Retirement Group Ltd needs to do the following.

Where I uphold a complaint, I can award fair compensation to be paid by a financial business of up to £160,000, plus any interest and/or costs/ interest on costs that I think are appropriate. If I think that fair compensation is more than £160,000, I may recommend that the business pays the balance.

**Decision and award:** I uphold the complaint. I think that fair compensation should be calculated as set out below. My decision is Better Retirement Group Ltd should pay Ms A the amount produced by that calculation – up to a maximum of £160,000.

**Recommendation:** *If* the amount produced by the calculation of fair compensation is more than £160,000, I recommend that BRG pays Ms A the balance.

This recommendation is not part of my determination or award. BRG doesn't have to do what I recommend. It's unlikely that Ms A can accept my decision and go to court to ask for the balance. She may want to get independent legal advice before deciding whether to accept this decision.

I consider Ms A would've remained in her former OPS. Better Retirement Group Ltd should therefore undertake a redress calculation in line with the pension review methodology, as updated by the Financial Conduct Authority in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers.

I understand Ms A hasn't taken any pension benefits yet. She is 58 and says her OPS provided for a normal retirement date of 60. The regulator's guidance will take these and other relevant matters into account.

This calculation should be carried out as at the date of my final decision and using the most recent financial assumptions at the date of that decision. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Ms A's acceptance of the decision.

BRG may wish to contact the Department for Work and Pensions (DWP) to obtain Ms A's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P). These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on Ms A's SERPS/S2P entitlement.

*If* the redress calculation demonstrates a loss, the compensation amount should if possible be paid into Ms A's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Ms A as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. 25% of the loss would be tax-free and 75% would have been taxed according to her likely income tax rate in retirement – presumed to be 20%. So, making a notional deduction of 15% overall from the loss adequately reflects this.

The compensation amount must where possible be paid to Ms A within 90 days of the date BRG receives notification of her acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my

final decision to the date of settlement for any time, in excess of 90 days, that it takes BRG to pay Ms A.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above – and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won't apply.

Further information - some examples of how calculations should be carried out are available on our website under 'Publications' / 'Online Technical Resource' / 'Investment' / 'Calculating compensation in investment complaints'

### **Distress and inconvenience**

In addition, I consider that Better Retirement Group Ltd should pay Ms A compensation for distress and inconvenience of £300. This is in recognition of the failings I've identified and the impact these have had on her.

Ms A felt that this element of my award was insufficient. I've reflected on what she's said, taking into account her circumstances, including the fact that she has confirmed she had no firm plans to retire yet. I'm satisfied the award is in keeping with our usual approach and so I won't be changing it.

### **My final decision**

For the reasons I've already set out, I'm upholding Ms A's complaint. As such, I require Better Retirement Group Ltd to put things right in the way I've outlined.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 23 March 2022

Kevin Williamson

**Ombudsman**