

The complaint

Mrs H complains that Insight Financial Associates Limited wrongly advised her to transfer her defined benefit occupational pension scheme and a personal pension into a Family Pension Trust (“FPT”). The transfer was to enable her to buy properties being developed by The Resort Group (“TRG”) in Cape Verde. Mrs H says it was unsuitable to use the pension for unregulated investments and this has put her retirement provision at risk.

What happened

Mrs H’s complaint was considered by one of our investigators. He sent his assessment of it to Mrs H’s representative and Insight Financial Associates Limited (Insight) on 9 July 2025. The background and circumstances to the complaint were set out in that assessment and are known to both parties, so I won’t repeat them all again in full here. However to recap, Mrs H was introduced to Insight by The Resort Group (TRG). Mrs H and her husband were looking to buy two Cape Verde commercial properties. They wanted to fund the purchase using their pensions via an FPT and needed Insight’s advice.

An initial meeting was held on 30 August 2009 and a fact find was completed. Mrs H and Mr H subsequently met with the adviser in December 2009. Mrs H had a defined benefit pension scheme with a cash equivalent transfer value of £106,631. And a small personal pension. The critical yield required on the transfer value to match the benefits from the defined benefits scheme was 7.5%. Mr H also had a personal pension arrangement.

Mr and Mrs H signed an insistent client declaration at this meeting. In summary, it said they knew Insight’s recommendation was not to transfer Mrs H’s pensions (and Mr H’s pension). The purchase of the properties relied on all the transfers going ahead. The report said despite the advice, Mrs (and Mr) H still wanted to go ahead with the transfers to purchase the Cape Verde properties.

Insight sent its suitability report to Mr and Mrs H dated 23 December 2009. The adviser recommended that Mrs H retain her existing pensions. But the report recorded that Mrs H still wanted to go ahead with the transfers to buy the Cape Verde properties.

The report said that two properties would be bought for around 128,000 and 118,000 euros. The pensions would fund 65% of this and the remainder would need to be paid on completion. The FPT was opened, and the transfer went ahead in 2010.

Mrs H, through her representative, complained to Insight in July 2024. The representative outlined a number of reasons why the advice was unsuitable and didn’t comply with regulatory guidelines at that time.

Insight didn’t uphold Mrs H’s complaint. It said it had advised Mrs H not to transfer and only facilitated it because Mrs H was treated as an insistent client, having already paid deposits to buy the properties. Insight also said Mr H worked with The Resort Group as a Financial Consultant – so he had in depth knowledge of how the investment worked. Mrs H didn’t agree with the firm’s findings and referred her complaint to us.

Our investigator didn't recommend that Mrs H's complaint should be upheld. He noted the critical yield required on the transfer value was 7.5%. And that 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. He said whilst businesses weren't required to refer to these rates when giving advice on pension transfers, he thought they provided a useful indication of what growth rates would have been considered reasonably achievable when the advice was given in this case. The discount rate was 6.5% per year.

The investigator said when taking into account Mrs H's attitude to risk and the term to retirement, he thought it likely Mrs H would receive benefits of a lower overall value than the occupational pension scheme at retirement. The investigator noted Insight had also concluded the same, and highlighted this as a disadvantage of transferring and why it wouldn't be recommending it.

The investigator said the investment presented a level of risk that was higher than what Mrs H had indicated she was willing to take. However he noted that Insight had based its analysis on Mrs H's attitude to risk being medium, and recommended against the transfer. It said this was because Mrs H was unlikely to better the benefits of the defined benefits scheme and the planned property purchases would exceed her attitude to risk.

The investigator said the regulator's Conduct of Business Sourcebook ('COBS') rules required Insight to 'act honestly, fairly and professionally in accordance with the best interests of its client'. In addition, Insight was also obliged to provide information that was clear, fair and not misleading. So the investigator said that Insight's recommendation had to be clear, and Mrs H had to have understood the consequences of going against its recommendation.

The investigator noted Insight had said that it was only giving advice on a suitable FPT as Mrs H was insisting on the transfer and investments in the Cape Verde properties. However the investigator didn't agree Insight only had a limited role. He said Insight was still obliged to consider Mrs H's full circumstances and objectives, including her income needs in retirement and that the investments were suitable for her attitude to risk.

The investigator said he thought Insight had referred to these objectives to some extent, but that it had fallen short of providing full and clear advice. He said Insight was still responsible for giving a suitable recommendation and this would include doing its own analysis of Mrs H's attitude to risk, capacity for loss and what course of action was in her best interests. The investigator said he didn't think Insight had done this in line with the expectations set by the regulator at the time.

The investigator said although he thought the suitability report was clear that Insight wasn't recommending the transfer and why, he said this was set out along with its recommendation for a suitable FPT provider. The investigator thought Insight could have set out its recommendation not to transfer and explain clearly why, before there were any discussions about the option of being an insistent client. He said combining the two messages and explaining how Mrs H could go against that advice in the same suitability report made it easier to go against the advice and miss the importance of why transferring the pensions wasn't in her best interests.

The investigator also noted that Mrs H had signed the declaration stating she wanted to go against Insight's advice a day before she was given the recommendation report. So the investigator didn't think Mrs H had had a chance to fully understand the reasons why Insight was advising against the transfer before 'insisting' she wanted to do it anyway.

The investigator said although Mrs H (with Mr H) was introduced to Insight by TRG with the idea of investing in the properties, Insight still needed to take care to follow the correct process without assuming Mrs H would want to go ahead anyway. The investigator said for the advice to be clear, Insight needed to set out its recommendation so that Mrs H had the opportunity to accept it before exploring the insistent client route. The investigator said he thought the failings in the advice process made it too easy for Mrs H to go against Insight's advice.

However, the investigator went on to say that although he thought there were some failings in the advice process, he thought Mrs H would likely have gone ahead with the transfers and property purchases anyway.

The investigator said he understood that Mrs H was in touch with TRG about the property purchases before Insight's involvement. He said Mrs H's husband was a financial adviser, and he thought his role in the matter was important in considering whether if the advice process had been different Mrs H would likely have made a different decision.

The investigator noted that Mr H was recorded as the selling agent on the TRG reservation form that was signed by both Mr and Mrs H. The investigator said Mr H already had links with TRG, would have understood the investment and had a plan to buy the properties before Insight was involved.

The investigator said given Mr H was a financial adviser as well as being an agent for TRG, he thought it unlikely that Mrs H would have changed her decision to transfer the pensions. The investigator said the purchase of the properties were contingent on both Mr and Mrs H transferring their pensions. He thought given Mr H was a financial adviser himself, it was more likely that Mrs H would have followed through with the plan to buy the properties by using her available pension provision.

The investigator said even though he'd identified failings in the advice process, it was clear in the suitability report that the advice was not to transfer, and if the property purchase was going to happen, to consider other means to finance this. He said Insight had provided an explanation of the risks of the transfer and investment in bold writing.

"I have made you aware that the purchase of a Family Personal Trust and utilising only the investment of a commercial property such as your Cape Verde property will increase the risk level of your investment as factors such as the lack of liquidity of the property asset and you have only one asset class. You stated this is suitable to fulfil your objectives of purchasing the Cape Verde properties and you are both aware of the associated risks involved and the fact that we deem this as a high risk investment which is higher than your stated risk above".

The investigator said despite the shortcomings there were still warnings about the risk of the property investments such as the possible issue of liquidity and that because of this, as well as the benefits of the defined benefits pension, that a transfer wasn't recommended.

The investigator noted Insight had said that a deposit was placed on the properties before Mrs H was put in touch with it. He said this wasn't clear because the reservation forms were signed after Insight's involvement, and it didn't specify any monetary deposits. But he said the reservation document was still signed several months before Insight gave any advice, so he thought this showed Mr and Mrs H's intention to buy the properties and that Insight's involvement was mainly used to enable the transfer of her pensions.

The investigator said having considered everything, he didn't think Insight had done all it needed to do in terms of its regulatory obligations when giving advice to Mrs H. However he said he thought Mrs H would have gone ahead with the transfer and property purchases

even if there hadn't been any failings during the advice process. He said it appeared Mrs H was already committed to buying the property before any advice was given by Insight. And all this was in the context that Mr H was a financial adviser and an agent for TRG.

The investigator therefore didn't think the complaint should be upheld.

Mrs H's representative didn't agree with the investigator's findings. It said, in summary, that although Mr H was an agent for TRG he wasn't well versed on the investment. It said Mr H, like many other advisers, was persuaded to become an agent for TRG with the promise of commissions. Mr H recalled he was persuaded by someone associated with TRG who he knew and who he trusted who'd had a long career in financial services. This person presented the idea of the investment and the possibility of becoming an agent. No formal training was given. And it said the investment was promoted as providing a steady income from rentals over coming years, along with the possibility of capital growth and the opportunity to then sell the asset at retirement. Mr H had said he only ever recommended a TRG investment to one other person who was a friend. He believed the literature and what he was told about its prospects.

It said although Mr H was a financial adviser at the time this didn't mean that Insight didn't have a duty of care to Mrs H. It said, if anything, Insight had a greater duty to ensure Mrs H understood the risks she was taking, in particular in the context that most of the conversations that had only taken place between Mr H, Insight and TRG. It said Mrs H was present at the final meeting that required the paperwork to be signed. It said Insight was there to give advice, not take orders. The representative said if the proposed investment was not suitable then this should have been made clear in the recommendation report. It said the regulator's Principles of Business required a firm to its business with due skill, care and diligence and to pay due regard to the interests of its customers and treat them fairly.

The representative said Insight was not only paid by Mrs H, but was also being paid by TRG for advising on the transfer. It said its understanding was that no fee was due unless the transfer went ahead. It said this was a severe conflict of interest and the fee from The Resort Group was substantially higher than the fee being paid by the client, making the investment part of paramount importance. It said a similar approach had been used in other cases - the wording of the recommendation letter was virtually identical. Disclaimers and warnings were word for word. It said this demonstrated a well thought out process to get the business across the line whilst trying to safeguard themselves.

The representative said the recommendation letter said the client was acting on advice they'd received from TRG regarding purchasing the investments and using a Family Personal Trust. It said these discussions had been held with Mr H.

The representative said Insight were there to advise on the entire proposition, but it didn't. It said if Insight had advised properly and truly discussed the risks Mrs H was adamant that she would not have proceeded. It said if Mrs H had had got any idea that there was a risk to her pension she would not have taken the risk and would have left her pension where it was.

The representative said discussions started with Mr H in late August 2009. It said according to the report, Terms of Business was signed 30 August 2009. The TRG reservation form was then signed 1 September 2009. Mr H said he'd had another couple of meetings with Insight and the person mentioned above from TRG. And the final meeting was on 22 December 2009, and this is when Mrs H was present and all forms were completed and signed - the report was then issued the following day.

The representative said had Insight provided proper warnings with no suggesting that "if that's what you want to do, we will do it" then this unsuitable advice could have been avoided

and Mrs H would still have her defined benefits scheme intact.

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 come to the same conclusions as the investigator, and largely for the same reasons.

Like the investigator, I think in deciding what is fair and reasonable in the circumstances the fact that Mr H was a financial adviser is important. It is also relevant that he was an agent for TRG. Clearly I understand that Mrs H was Insight's customer in her own right and so Insight had to meet its own regulatory obligations to Mrs H. But I think given Mr H was a financial adviser and agent for TRG, Mrs H would likely have put a lot of weight and trust on his opinion. And, ultimately, in my opinion, Mr H more likely than not made an informed decision about the transfer and investment into the Cape Verde properties. And I think Mrs H would likely have followed Mr H's guidance and so also proceeded with the transfers and investment, irrespective of any weaknesses in the advice process.

The investment was into an overseas commercial property development. So the investment returns and, ultimately, what Mrs H's pension could provide at retirement was entirely dependent on the success, or otherwise, of this single overseas business venture. I appreciate that Mr H may not have had extensive training on becoming an agent of TRG and may have only been involved in the sale of one other property. And that the literature and what he'd been told about the opportunity made it appear an attractive investment proposition.

However I think given Mr H's background and experience, he would likely have had a reasonable understanding of the nature of this type of investment and the normal risks associated with it. I think as a financial adviser Mr H would likely have been aware that investing in such an overseas commercial property development presented significant and high risks. And so I think it follows that Mr H went into the transaction accepting those risks.

However even if that wasn't the case, Insight provided warnings about the risks involved in bold text in its recommendation report. These included that the investment was high risk, the developer could get into financial difficulty, there were liquidity risks and Mrs H was investing in a single asset class. So Mrs H herself ought reasonably to have been alerted that the transaction was high risk. All these risks are the usual risks associated with this type of investment. And as I've said, I think Mr H would likely have been aware of them even without Insight's warnings. Ultimately, I think Mrs H would likely have been guided by her husband in making the transaction.

I appreciate the points made by Mrs H's representative about the nature of the relationship between the different parties involved, commission paid and conflicts of interest. And that Mr H may have been persuaded by the person he trusted who was already involved in TRG. However it seems to me that, whether persuaded by third parties or not, Mr H had decided that investing in the development presented a good opportunity and that he could use his and Mrs H's pension to buy into it.

I accept that in some circumstances an advising firm can go through the motions of the advice process and recommend against a transaction in its written documentation, whilst at the same time encouraging it behind the scenes and then facilitating it. So the outcome is effectively pre-ordained, and in reality the client was never really 'insistent'. However as I've said, Mr H was a financial adviser. And I think he would have been familiar with the normal

advice process and regulatory obligations on a firm when providing advice. So I think Mr H likely went into the transaction with his eyes open. and would have been aware of the circumstances and how the transaction was facilitated. And as I've said, I think its likely Mrs H would have followed Mr H's lead.

I've carefully considered what Mrs H's representative has said in response to the investigator's view. However, ultimately, for the reasons given, I think Mr and Mrs H were motivated to invest in the development, Mr H was able to make an informed decision about going against the firm's recommendation and Mrs H was always likely to have proceeded with it along with her husband, irrespective of any failings by Insight.

I appreciate that the transfer and investment has had a significant financial impact on Mrs H's pension provision for retirement, and that she will likely be disappointed with my findings. However, taking all the above into account and for the reasons given, I'm not persuaded that it would be fair and reasonable to uphold Mrs H's complaint in the particular circumstances of the case.

My final decision

My final decision is that I don't uphold Mrs H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 10 October 2025.

David Ashley
Ombudsman