

complaint

Mr R complained about advice given by Insight Financial Associates Limited (Insight) to transfer his personal pension plan to a self invested personal pension (SIPP) with a new provider. The fund was then invested in an overseas property development.

background

Mr R is complaining about advice given in 2009. At the time he was 58, employed and married. He had a personal pension plan with a major provider. His son was working for a company which was a selling agent for an overseas property developer. Mr R's son, or a colleague of his, put Mr R in touch with Insight to look into the possibility of using his pension fund to buy a hotel room in a resort complex in Cape Verde.

Insight requested information from the provider of Mr R's pension plan. It wrote to Insight on 9 July 2009 with details of the plan (a section 226 retirement annuity contract). Mr R had taken it out in 1981 and it had been made paid up from 1 August 1992. It was written to age 65 to provide an annuity. The benefits were made up of separate elements, some of which were guaranteed, such as the basic annuity and annual bonuses. These were set out in the information provided to Insight, with the available transfer value, as:

Basic amount of Annuity (relative to 1 August 2015): £1,610.03
Reversionary Bonus to date (relative to 1 August 2015): £2,512.17
Transfer value of £39,077.88

Mr R met with Insight's adviser on 10 August 2009. I've referred below to what Mr R says about that meeting. Insight's suitability report was dated 24 August 2009. Amongst other things it said:

- Mr R had decided to purchase a Cape Verde property and following discussions with his agent (his son) he'd decided to fund that via a SIPP. Insight's advice had been requested only to find the most suitable SIPP provider to purchase the property. Insight hadn't given any advice about a SIPP being the most suitable vehicle to facilitate that.
- Mr R had recently completed a financial review with his adviser (his son) who'd decided that a SIPP was suitable for Mr R's needs and circumstances. Insight had only been given limited information about Mr R's finances.
- The report said, more than once, that no advice had been given about the purchase of the property.
- Insight would be paid a fee (£500) by the product provider. And €1,999 by the developers. A £250 annual adviser fee was also mentioned at the end of the report (although I don't think Insight provided any ongoing advice and didn't take that fee).
- Mr R had completed an attitude to risk questionnaire with his existing adviser. It had been agreed his attitude to risk was high.
- Details of his existing pension plan were set out. Insight recommended the pension was transferred because Mr R wanted to use his pension fund to purchase the property and his existing pension didn't offer that facility.
- He'd discussed the options for purchasing the property with his (other) adviser who'd advise Mr R as to the further costs in finalising the Cape Verde purchase.
- The high risk nature of investing in a Cape Verde property was mentioned several times. Appendix I of the report set out a number of risk warnings.

our investigation

The complaint was upheld by our adjudicator. He said advising Mr R to transfer to the SIPP to invest in an overseas property wasn't suitable. Insight had said Mr R had already decided to invest on advice from his son. But his son wasn't a regulated adviser. Insight had to assess the suitability, not just of the transfer to the SIPP, but also the proposed underlying investment. The adjudicator referred to the alert issued by the then regulator in January 2013. It posted dated the advice. But it didn't impose new regulatory duties. It confirmed the existing position.

Insight had classified Mr R as having a high attitude to risk. Insight hadn't conducted its own risk profiling exercise but had relied on what Mr R's son had told it. The adjudicator didn't think there was any justification for recommending that Mr R, particularly bearing in mind his age and proximity to retirement, move from a low risk pension plan with guarantees to a high risk and illiquid investment in an offshore property.

The adjudicator added that the charges were relatively high given the amount transferred (£39,077). Further, as the property cost £99,950 and the funds transferred were only about half of that, it wasn't clear how Mr R was to fund the difference. He'd ended up only owning a percentage of the property.

Mr R didn't agree with the redress the adjudicator had suggested. And Insight didn't accept the adjudicator's view so the complaint was referred to me. I asked for some more information, in particular about the part played by Mr R's son. We also asked Mr R if he'd received any incentive payment for investing.

Mr R said he didn't get any payment. He supplied copies of his bank statements with notes to explain some of the transactions (such as the loan mentioned below). He also provided a statement dealing with the other points we'd raised. In summary:

- His son was employed by the company selling the properties. He didn't know exactly what his son did or if he'd received any commission or other payment. His son wasn't qualified and hadn't worked as a financial adviser. Mr R wouldn't have taken advice from his son. He queried why he'd have met with Insight's adviser if his son was advising him.
- He'd been told by one of his son's colleagues about a new pension scheme that might be worth looking into. He'd then got a call about allowing Insight to get details of his existing pension. He signed letters of authority and he telephoned his existing provider to confirm Insight was acting for him.
- He understood he'd be getting advice from Insight as to whether the new plan would be better than his existing pension. He hadn't already decided to invest; he hadn't paid a deposit; and he hadn't signed any documents agreeing to buy a hotel room.
- He met Insight's adviser at a hotel. Others were there too. The adviser spoke to them as a group about how the new pension scheme worked – a SIPP and investing in a hotel room in Cape Verde – before talking to them individually. One person had already had his appointment and seemed very pleased with the idea.
- When Mr R had his meeting, the adviser had all the details of Mr R's existing pension and told him it wasn't very good and had been losing money. Mr R recalls him saying *"This new pension will be much better for you. When you get to 65 years and retire, you will get at least £100 per month more than [the existing provider] will give you"*.
- Mr R thought it sounded like a great opportunity for him. He'd own a real asset which would increase in value as well as pay him rent each month.

- He described the adviser as professional and well spoken, convincing and apparently trustworthy. The adviser said he was the expert, not just about pensions and investments, but he was a property investment specialist too. He emphasised his advice was independent. He said he was making similar arrangements for others.
- Mr R was impressed by his face to face advice. The adviser's enthusiasm, the general '*feel good*' atmosphere and the fact that others had agreed to invest, encouraged Mr R and gave him confidence. It was only at the meeting that he decided to go ahead.
- Mr R trusted the adviser. He'd advised Mr R to move his pension to the new arrangement and invest in Cape Verde. If he'd advised against Mr R would have left his pension where it was. And, if he'd told Mr R he could have got an immediate pension of over £4,000 each year, Mr R would have taken that '*there and then*'. He'd been unable to borrow money from the bank and having that pension, plus a possible tax free cash sum, could have made a difference.
- The adviser said all Mr R needed to do was to sign a few forms. Mr R signed the paperwork he was given. He didn't complete any of it with his son – it was all done at the meeting with the adviser. Some of the documents had been pre completed with just his signature required. Others had been left blank so he just signed them.
- He didn't recognise the reservation form he'd apparently signed on 8 July 2009 (the same date as he'd signed the letters of authority). He agreed the signature looked like his. But he said he'd have queried anything about a deposit as he had no money to pay one. He'd borrowed money from a relative to adapt his house for his wife who was unwell. He provided evidence of the loan and copies of his bank statements.

Mr R's representative also made a number of points. Amongst other things it said Insight's file wasn't complete and there were inconsistencies in the documentation. Mr R should have been told his existing pension was a very valuable section 226 plan from which he could have taken immediate benefits. The recommendation can't be justified. The guaranteed annuity would have cost three times the transfer value to replace. Even if Insight's advice could have been limited to the SIPP (which it couldn't) Mr R shouldn't have been advised to give up a guaranteed income for life for an uncertain income dependent on the investment performance of a relatively low transfer value.

Insight had said Mr R's son was involved. But Mr R met and discussed the transfer with Insight's adviser. Insight mistakenly believed it wouldn't be responsible for the underlying investment and could instead limit its advice to the most appropriate SIPP. Mr R had no relevant property or financial experience. He'd only decided to purchase the property at the meeting with Insight's adviser.

We shared the further information with Insight. It maintained what it had said earlier about the involvement of Mr R's son. It said what Mr R's representative had said about inconsistencies in the dates of some of the documents was wrong. And it wasn't unusual for a fact find to be part typed and part handwritten – some of the information wouldn't be available until the meeting and would be added then. It didn't agree with what had been said about the guaranteed nature of the benefits Mr R's existing plan provided. Insight didn't think Mr R would have signed blank forms. And he had time to cancel the transaction. Insight accepted Mr R didn't receive any incentive but his son would have got a payment.

my provisional decision dated 6 March 2020

I set out my findings under several headings as follows.

'was Insight's advice suitable?

Insight says it isn't responsible for Mr R's losses because it didn't recommend the property investment. But it's clear, from the suitability report, that Insight did recommend that Mr R transfer to the SIPP. The rationale was that he wanted (and had already decided) to make a particular investment. But, as the adjudicator explained, it wasn't open to Insight just to consider the transfer to the SIPP and find a suitable provider. The regulator's alert makes it clear that the suitability of the overall proposition, that is the wrapper and the expected underlying investment, must be considered.

The alert post dated Insight's advice. But it didn't follow any changes to the regulations. As the alert itself says, it was issued because it had come to the regulator's attention that some financial advisers were giving advice on pension transfers or switches without assessing the advantages and disadvantages of the proposed investments in the new pension. The alert goes on to explain why that approach was unacceptable and why suitable advice generally required consideration of the overall proposition.

Insight was aware Mr R had another 'adviser'. But Mr R's son wasn't a regulated financial adviser. In any event, Insight couldn't proceed on the basis it didn't need to consider the proposed underlying investment as Mr R would be getting advice about that elsewhere – Insight couldn't restrict its advice in the way it sought to do. I don't agree with what Insight says about it being up to Mr R's other 'adviser' to discuss the risks of the proposed investment and any other issues, such as how Mr R proposed to fund any balance of the purchase price. The investment was part and parcel of the overall proposition and Insight should have considered its suitability, including issues such as if Mr R would need to raise more money from other sources.

Insight identified the proposed investment as high risk. Insight has said Mr R's attitude to risk had been assessed (not by Insight) as high. I don't think the assessment of Mr R's attitude to risk as high was credible. I think Insight should have tested that and explored with him why he apparently wanted to take such a high degree of risk with his only pension provision. And, even if Mr R confirmed that he wanted to take a high degree of risk, Insight should have recognised that he didn't have the capacity for loss this sort of investment might produce.

Insight says it didn't recommend that Mr R gave up guarantees on his existing plan: details of the plan were highlighted and discussed with him but as he wanted to purchase the property he was happy to proceed. I don't think that's good enough. Insight knew that by transferring Mr R would be giving up his existing pension arrangement and the benefits that it would provide. Without unlocking the money held in that plan, Mr R wouldn't have been in a position to invest as he did.

The reason for transferring to the SIPP was to allow the purchase of the Cape Verde property. If that wasn't a suitable investment for Mr R – and I don't think it was – then the purpose of the transfer falls away. I don't think a SIPP was suitable for Mr R in any event – his fund value was modest and likely to be eroded by charges.

Mr R had no other pension provision. He may have been keen to try to improve his retirement benefits. But the section 226 annuity would have provided a secure base line income in retirement. Mr R's representative has said the transfer value paid (£39,077.22) represented poor value in return for the benefits being given up. I think that was on the basis Mr R could have got an immediate pension of over £4,000 pa in 2009 which, as I've explained below, I don't think was the case. But, that aside, I don't think Mr R could afford to

take the sort of risk that investing in a hotel room in Cape Verde posed. Insight's advice was unsuitable. I think Mr R should have been advised to retain his existing pension plan.

if Insight had advised Mr R against transferring what would he have done?

I've thought about if Mr R would have gone ahead anyway and even if Insight's adviser had advised against. I don't immediately see why a consumer who had been referred to a specialist pension adviser would be inclined to disregard his or her advice. Mr R doesn't strike me as someone who'd be prepared to ignore professional advice. Rather the reverse – he's made it clear that he only decided to invest after his meeting with adviser.

If Insight had advised against and Mr R had said that he still wanted to proceed, Insight would have needed to have treated him as an insistent client. Assuming Insight was prepared to act on that basis that would have entailed a discussion with Mr R about why he was prepared to proceed despite advice to the contrary and his reasons recorded. I think that would have given Mr R pause for thought about whether doing what he planned was really a good idea.

All that said, I recognise Mr R's son was involved. Sometimes the involvement and influence of a third party such as a relative or friend will be a powerful influence and may mean that a consumer will be prepared to disregard professional advice. That's why we asked Mr R about his son's involvement. I've considered very carefully what Mr R's said and Insight's comments.

Mr R has been very clear about what happened. He's provided his detailed recollections about how he found out about the Cape Verde property and what led up to his decision to transfer and invest. His son wasn't an authorised financial adviser and Mr R has said he wouldn't have taken advice from him. Mr R says he understood he was getting specialist advice about his pension from Insight, he trusted Insight's adviser, was impressed by him and only went ahead because Insight's adviser said he should. Mr R's decision was only made at the meeting with Insight's adviser.

I find what Mr R says persuasive. It strikes me as his honest recollection as to what happened. The idea to invest in the hotel room may have come from Mr R's son (or one of his colleagues). I don't know if Mr R's son stood to benefit financially if Mr R went ahead. But he was shown as the agent and I'd assume got some form of commission. I don't doubt Mr R would have wanted to help his son and boost his son's earnings if possible. But I'm not persuaded Mr R had decided he definitely wanted to go ahead until after he'd met with Insight's adviser. Mr R has described the adviser's impact and influence. I think the adviser's role was instrumental. Mr R was convinced, by someone he regarded as an expert and was prepared to trust, that transferring to the SIPP and investing in the hotel room in Cape Verde would generate more pension income for him. That, coupled with the fact that others had been persuaded to invest, resulted in Mr R's decision to proceed.

I don't think that this is the sort of situation where, if Insight had recommended against, Mr R would have gone ahead anyway. Mr R has said, and I accept, that if Insight's adviser had recommended he retain his existing pension plan, he'd have done that.

Nor, from what I've seen, was Mr R bound to go ahead by the time he met with Insight's adviser. Insight has pointed to the reservation form which Mr R appears to have signed (although he doesn't now recall) on 8 July 2009. But he's certain he didn't pay any deposit and didn't have the money to pay one. Mr R has explained his financial position and

provided evidence in support. His bank statements don't reveal any payment which might have been a deposit and they confirm what he's said about not having been able to pay one. He's also provided evidence to support what he's said about having borrowed money.

And, in any event, he was dependent on being able to use the money in his pension fund. He didn't have any other means to pay for the hotel room (or share thereof). So, if he couldn't use his pension fund, he wouldn't have been able to proceed anyway. At worst, he'd have lost any deposit he'd paid. But, as I've said, from what I've seen, he didn't pay one.

I note some of the other points raised by Mr R's representative, such as discrepancies in the dates of the documents. The suitability letter says it was prepared on 24 August 2009 but it wasn't signed by the adviser (see page 20 of the letter) until 8 September 2009. What isn't clear is when it was provided to Mr R. His representative's point is, if Mr R didn't it until after the later date it was by then too late – the transfer had taken place. But regardless of any arguments about whether Mr R had time to cancel, the suitability report confirmed the advice Mr R was given at the meeting on 10 August 2009. I've considered that meeting and its impact on Mr R above. I don't see there was anything in the suitability report which would have caused Mr R to reconsider. So I don't think anything turns on the dates and any inconsistencies.

Mr R's representative has also referred to a potential conflict of interest – it suggests Insight's adviser had contacts in TRG. I also note how Insight was remunerated – by the SIPP provider and TRG. But, given what I've already said about Insight's advice being unsuitable, I haven't explored this issue further.'

I went on to say how Mr R should be redressed. I said we'd aim to put him the position he'd be in now if Insight had given him suitable advice. That would have been to retain his existing pension plan. Redress should be based on the cost of buying the guaranteed annuity that Mr R gave up, with the annuity payments Mr R's missed out on being made up too. There were some uncertainties as to exactly what Mr R would have done so I'd made some assumptions. In summary I said:

- I wasn't convinced Mr R would have taken his benefits in 2009. The figures quoted were what he'd get at age 65 not if he took benefits immediately – which would have been less. I was going to work on the basis he'd have waited until he was 65.
- I wasn't sure how Mr R would have taken his benefits, that is the basis of the annuity, and if he'd have taken any tax free cash, if available. I assumed the annuity indicated in 2009 was the maximum income that could be paid – single life, no escalation, no guarantee period and no tax free cash. I thought Mr R would have selected an annuity on that basis anyway and whatever provided the most income. But I did think he'd have wanted a tax free cash lump sum. So he'd have opted for a reduced pension and an annuity paying maximum income. We'd ask Mr R's former provider if it could provide details of the tax free cash and annuity that would have been available at age 65.
- Mr R had suffered a past loss in terms of the annuity payments that he'd have received since he turned 65 plus the tax free cash lump sum. The net income amounts plus interest and the lump sum with interest should be paid to him.
- As to future loss, Insight would need to pay Mr R the current capital cost of providing an equivalent annuity on the same basis, less an allowance for the tax that he'd have paid on the annuity payments. I assumed Mr R was a basic rate tax payer. So a 20% deduction from the capital cost of the annuity could be made. Mr R had some health issues which might mean he'd qualify for an enhanced annuity rate (which would be

reflected in the cost of the annuity). If Insight wanted to take into account Mr R's health in costing the annuity it could ask him to complete a medical questionnaire.

- I set out what should happen regarding Mr R's SIPP, the Cape Verde investment and any arrears of and future SIPP fees.
- Insight should also pay Mr R £250 compensation for distress and inconvenience.

Both parties commented on my provisional decision. Mr R agreed he would have taken the maximum tax free cash from his pension fund. He provided details of his income and said he was currently a non taxpayer and would be even with the annuity income so no deduction for income tax should be made. And the capital cost of purchasing an annuity shouldn't take his current state of health into account but should reflect the purchase cost in 2015. His health has been worsened by the stress caused by the money worries he's had as a result of the unsuitable advice he received. The award for distress and inconvenience should be higher to reflect the effect on his health and wellbeing and that he's not had the use of the tax free cash and pension income.

Insight's comments centred on the part played by Mr R's son - described by Insight as a '*prolific*' salesman who also sold properties in Spain and Turkey - and his knowledge, experience and influence. Insight reiterated that Mr R had signed a reservation form before Insight's involvement with the purchase vehicle shown as a SIPP. Insight maintained Mr R would have proceeded with the investment whether Insight was involved or not. He'd given detailed information about his meeting with Insight's adviser. But not about what his son had said. Insight also questioned why Mr R hadn't complained when he reached age 65 in 2015.

We shared Insight's response with Mr R's representative together with some detailed information we'd received from the provider of the pension Mr R had given up when he transferred (which we've also shared with Insight). The provider had told us that the fund value at 1 August 2015 would have been £77,979.51. Based on the format of the pension I'd set out in my provisional decision this would have provided Mr R with tax free cash of £19,494.88 and a single life annuity of £3,693.00 pa.

Mr R's representative provided statements from Mr R and his son. Mr R's son said he'd never been involved in selling property in Turkey or Spain. He'd only worked as an introducer and didn't give any advice. He'd never worked as a financial adviser and he hadn't received '*hundreds of thousands*' in commission.

Mr R said he didn't recognise his son from the picture painted by Insight - an internationally mobile, highly successful and experienced property salesman. Mr R said he'd been very clear all along about how he'd come to meet Insight's adviser and how he and others were impressed by him. It was an unusual event for Mr R and he remembered it well. He queried why the adviser would have gone to the trouble of travelling to where Mr R lived to meet him if he'd already decided what to do - someone could have just brought the blank paperwork to him to sign and post back.

Insight then provided some more information about directorships held by Mr R in companies that his son was also a director of. We forwarded the details to Mr R's representative and asked for comments.

Mr R's representative explained that it was to do with a community project, details of which were provided, along with the rationale for Mr R's involvement. It post-dated Insight's advice by several years. Mr R's representative also said it had been discussed with Insight earlier.

Insight said there was nothing on its files to show it had been mentioned earlier. It said Mr R knew about property development. He'd gone into the Cape Verde investment knowing what he was doing with his son's support and aware of the risks.

In response Mr R's representative reiterated that the directorships post-dated the advice given by Insight by several years. It didn't think what Insight had said was relevant. It didn't have a record of the discussion with Insight about Mr R's involvement in the companies engaged in connection with the project.

my further provisional decision dated 27 July 2020

As further information and evidence had come to light since my provisional decision I issued a further provisional decision. I've summarised my (further) provisional findings:

- Insight had referred to the sales network that Mr R's son worked for receiving over €3m in commissions. I didn't know where that figure had come from. Or how much commission Mr R's son may have received. Even if the network was successful that didn't mean he was too.
- His evidence wasn't particularly helpful. He'd given a very brief statement with no details of his involvement in selling the Cape Verde properties such as for how long he was an agent; the number of properties he sold; what sort of commission he earned; how senior his position was; and how the sales process operated.
- I could, to some extent, understand why Insight had contrasted that – and a lack of detail from Mr R himself about his son's involvement - with Mr R's clear recollection of the presentation given by Insight's adviser and the meeting with him.
- I accepted there would have been some discussions between Mr R and his son. The suitability report recorded that Mr R had decided to purchase a Cape Verde property and, following discussions with his agent, he'd decided to fund that via a SIPP. It also said Mr R had recently completed a financial review with his adviser (his son) who'd decided that a SIPP was suitable for Mr R's needs and circumstances. If any of that wasn't accurate I'd have expected Mr R to have pointed that out at the time.
- I'd recognised throughout Mr R's son's involvement. Where a close family member or friend is involved, we might say the consumer would have gone ahead anyway, and despite any professional advice against. Sometimes the influence of a relative or trusted friend will be paramount. But it will depend on the circumstances of the case.
- I didn't underplay Mr R's son's role. The idea of investing in a property in Cape Verde came from him or a colleague. The investment and funding it via Mr R's pension was mentioned. Whether Mr R's son was a successful salesman or someone who just sold a small number of properties, Mr R trusted him and saw the investment as something that would benefit both of them. I assumed Mr R's son got commission for the sale. And Mr R thought the investment would generate rental income and increase in value so that it could be sold at a profit when he came to retire and needed to access his pension fund.
- But Mr R had been very clear all along that he didn't make a firm decision to go ahead until he met with Insight's adviser. It seemed Mr R had signed the reservation form before Insight's involvement. But he'd said he hadn't paid any deposit and he'd provided evidence to show he couldn't have afforded to do so. He could have pulled out if he later decided against buying the property.
- What Mr R had said about the adviser's impact and influence was persuasive. The adviser had given Mr R the confidence to proceed. I accepted that he hadn't made a final decision until he met with the adviser.

- Insight's adviser didn't advise him against transferring to make the proposed investment. Mr R didn't go ahead despite advice to the contrary. He agreed to the transfer and investment after Insight's adviser had endorsed it. There was no real reason for Mr R to think about things again. He'd had professional, specialist pensions advice that doing what he and his son proposed was a good idea.
- Insight's advice was unsuitable. The transfer, which meant that Mr R gave up valuable guaranteed benefits, was unsuitable, as was the investment. Insight should have advised Mr R against transferring. I didn't agree Mr R would simply have disregarded Insight's advice and gone ahead anyway. I maintained he placed significant weight on what the adviser had said. Mr R had said, if the advice had been to leave his pension where it was, he'd have done that. I accepted that. Mr R's losses flowed directly from Insight's unsuitable advice to transfer.
- Insight's advice had to be judged at the time. After acquired knowledge or experience can't be taken into account in judging the suitability of advice given several years earlier or in deciding whether Mr R would have gone ahead anyway. From what I'd seen Mr R didn't have any relevant knowledge or experience at the time.
- Full details of the later project had been provided, including Mr R's involvement and why he became, for a limited period, a company director of the companies mentioned. Even if Insight hadn't earlier been made aware, full details had now been provided and Insight had been able to comment.

I said my view remained as set out in my earlier provisional decision. I still thought Mr R's complaint should be upheld.

Mr R accepted my provisional decision. Insight didn't. In summary:

- It expressed disappointed that there didn't appear to be a truthful recollection of events from Mr R and his son. Mr R had confirmed he was told by one of his son's colleagues about a new pension plan capable of holding property as an investment. Mr R's son and his colleagues worked for the network selling the properties and would all have been fully aware of how the property could be purchased. Mr R's son would have had the same knowledge as his colleagues. He'd have been fully trained, including as to how a pension fund, usually a SIPP, could be used to purchase the property. He worked alongside the founder and master agent which would have given him all the necessary knowledge to explain how a SIPP could be used for the purchase of the property. Examples of brochures given to the sales agents were provided. They pointed out that SIPPs could be used to purchase the properties so all agents were fully aware.
- The only problem was that a regulated individual had to advise on a pension switch to a SIPP. Mr R's son didn't meet that requirement. Once the decision to use a SIPP to fund the purchase had been made and documented on the reservation form, clients were referred to an independent financial adviser to continue the process.
- Insight questioned why it was acceptable that information required from Mr R's son hadn't been forthcoming. It said there had to be a reason why Mr R and his representative hadn't divulged the information, which might be because what Insight had said was true. Mr R had given a detailed statement about what had happened with Insight even though that had been in 2009 and without having a similar depth of recall about what had happened with the agent, his son.
- It wasn't clear who'd advised Mr R when it came to changing the investment from the original property to a fractional (50%) investment in another property and who'd helped him through the legal process. The rental income for a smaller property would

have been less and he'd have known that from information from the SIPP provider and he should have queried it. He hadn't asked Insight about it.

- Mr R's son had been involved in the later project and was also a company director. That didn't paint a true picture of what Mr R knew about his son's activities and could suggest there was something to hide.
- If taking his pension benefits at age 65 was so important to Mr R why didn't he contact the SIPP provider or an adviser at the time to find out what his options were?

my findings

Mr R is complaining about advice given in 2009. His complaint was made to Insight in September 2017. Insight initially said the complaint had been made too late – more than six years after the advice had been given and more than three years from when Mr R was aware (or reasonably ought to have become aware) he had cause for complaint. One of my ombudsman colleagues issued her jurisdiction decision on 13 November 2018. Her view, for the reasons she set out, was that Mr R's complaint hadn't been made too late and we could investigate it.

We're required to keep jurisdiction under review throughout our investigation of the complaint. I've done that. My view remains the same as my colleague's – that the complaint hasn't been made too late.

I've considered again all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In response to my further provisional decision Insight highlights a lack of detail from Mr R and his son about the latter's involvement. I'd earlier noted that I didn't think Mr R's son had been particularly forthcoming. But, even if I accept what Insight say about Mr R's son, I don't think that would change my views overall. I think I can reach a fair decision based on what I've seen.

To explain, I can accept that, as a trained sales agent, Mr R's son would have been aware of the facility to purchase the property via a SIPP. And the reservation form which Mr R signed identified a SIPP as the selected payment plan option. It's unclear exactly what, if anything, was discussed between Mr R and his son or any of his colleagues. Mr R has said he'd never heard of a SIPP before his meeting with Insight's adviser. It's possible that payment option was entered onto the reservation form with little or no discussion.

But, even if that wasn't the case and there was discussion about a SIPP and how that worked which Mr R doesn't now recall, the point is that he was then referred to Insight for advice about if he should transfer to a SIPP to facilitate the investment in Cape Verde. Even if Mr R had (or should have had) some idea what a SIPP was and that it could be used as a pension vehicle to invest in overseas property, it was up to Insight's adviser to give suitable advice. For the reasons I've explained I don't think he did.

I accept what Mr R has said about not having made a firm decision to go ahead until he'd had that advice. Insight's advice was pivotal. If Insight had advised against I don't think Mr R would have gone ahead. In saying that I recognise, as I've done throughout, Mr R's son's involvement and which I've carefully considered. But, for the reasons I've explained earlier, I don't think Mr R would have proceeded but for Insight's advice that he should.

Insight has termed it a '*problem*' that Mr R had to be referred to a regulated adviser for the switch to a SIPP to go ahead. The issue is one of consumer protection. A requirement to take advice from an independent, trained and regulated professional adviser aims to avoid poor consumer outcomes and detriment. Financial services and products, including pensions, can be complicated. Regulated firms have to recommend appropriate products and provide services in line with their regulatory duties and obligations. Insight's adviser had to give unbiased suitable advice. It wasn't a case of simply continuing the process or '*rubber stamping*' what Mr R thought he might want to do, based on what other, unqualified, parties may have told him. Transferring to a SIPP to invest in overseas property wasn't suitable for Mr R. Insight's adviser should have told Mr R that.

I haven't investigated what happened later when there was a consolidation exercise. It may be that Mr R's son helped him. I don't know. But I don't think that changes anything as to what I've said about the unsuitable advice Insight had earlier given and which meant Mr R went ahead with the property purchase.

I note that Insight remains concerned about Mr R's and his son's later involvement in the project mentioned. I think the situation was somewhat unique. But it all happened several years later. It can't be right to take into account after acquired knowledge or expertise. I've judged the advice on the basis of Mr R's circumstances at the time. And I'm not sure, even if he had a greater degree of knowledge at the time, I'd reach a different conclusion anyway.

I don't regard it as significant that Mr R apparently didn't enquire about taking his benefits from his SIPP when he reached age 65. I'm not sure if Insight is saying that casts doubt on whether Mr R would have retained his existing pension plan. Mr R may have been forced to reconsider and delay taking his benefits when he reached age 65 given that the Cape Verde investment was illiquid. Or his plans to retire then may have changed generally.

All in all my view remains, for the reasons I've given here and in my earlier provisional decisions, that Mr R's complaint should be upheld.

redress

Insight should redress Mr R as I've previously suggested. I set out in my further provisional decision that Mr R's total monthly income was £870.14 or £10,441.68 pa. Including the annuity income made a total of £14,134.68. The current personal allowance is £12,500 so Mr R would currently be a basic rate tax payer on a small part of his income. Instead of applying a reduction of reduction of 20% I thought 10% should be applied to recognise that Mr R would have to pay tax on about half the income he received from his existing pension provider. The same reduction can be applied to the capital cost of the annuity.

I also acknowledged that Mr R didn't think it fair that his current state of health might result in it costing Insight less to put things right. But I still thought Insight could take that into account if it chose. I said we'd expect Mr R to assist Insight to facilitate that settlement if required. And, despite Mr R's disappointment with the award for distress and inconvenience, I said I wasn't going to increase it.

past loss

Mr R will have suffered a past loss in terms of the annuity payments he'd have received since he turned 65. According to the previous provider Mr R would have got £3,693.00 pa on the basis set out (after payment of tax free cash of £19,494.88). Insight must pay the annuity

amounts to Mr R plus interest (at 8% simple pa) from the date each payment fell due to the date of settlement. Insight can apply a reduction of 10% to the payments to reflect the tax that Mr R would have paid.

Insight will also need to pay Mr R the tax free cash lump sum of £19,494.99 plus interest on the same basis – 8% pa from his 65th birthday to the date of payment.

future loss

Insight will need to pay Mr R the current capital cost of providing an equivalent annuity on the same basis. That can be adjusted to reflect the tax Mr R would have paid on the annuity payments. Again a 10% reduction is fair here.

I understand Mr R has some health issues which may mean he'd qualify for an enhanced annuity rate (which would be reflected in the cost of the annuity). If Insight wants to take into account Mr R's health in costing the annuity it can ask him to complete a medical questionnaire.

Mr R's SIPP

That still leaves Mr R's SIPP. Ideally it should be closed. But I don't think that will be possible given that it still holds the Cape Verde hotel room (or a share in it). As far as I'm aware that investment is illiquid – there's no market for it and it can't readily be sold. Insight should take ownership by paying a commercial value acceptable to the SIPP provider. That will remove the asset from the SIPP and allow it to be closed.

If Insight is unable or unwilling to purchase the investment the actual value should be assumed to be nil. Insight may require that Mr R provides an undertaking to pay Insight any amount he may receive from the investment in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the SIPP. Insight will also need to meet any costs in drawing up the undertaking.

If the SIPP can't be closed then Mr R will continue to incur SIPP fees. I think there are arrears too. I've seen a letter dated 8 March 2018 from the SIPP provider about outstanding annual administration fees for 2015 (£576 including VAT); 2016 (£594); and 2017 (£594). That's a total of £1,764. The letter says a rental payment of £94.33 has been received and the SIPP bank account has a balance of £250.63, which makes a shortfall of £1,513. I'd assume that since then further fees may have been added.

Mr R only has the SIPP because Insight gave unsuitable advice. Insight should clear the SIPP fee arrears – whether the SIPP can be closed or not.

And, if the SIPP can't be closed, Insight will need to make a payment to Mr R for future SIPP fees. Insight should pay Mr R a lump sum equivalent to five years' worth of SIPP fees at the current rate. This gives a reasonable period within which the residual illiquid investment held in the SIPP can be removed and the SIPP closed. I'm not sure if, in the interim, any further rental payments will be made into the SIPP. My understanding is that such payments may now have ceased. But if any are made they can be dealt with under the terms of any undertaking Mr R gives.

The disruption to Mr R's retirement plans will have caused him distress and inconvenience. Insight should pay him £250 compensation for this.

my final decision

I uphold Mr R's complaint. Insight Financial Associates Limited must redress Mr R as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 21 September 2020.

Lesley Stead
ombudsman