

## **complaint**

Mrs A has complained that Reid Scott & Ross Limited ("RS&RL") provided her with unsuitable advice to transfer the value of her preserved pension benefits from an occupational defined benefit pension scheme into a personal pension plan.

## **background**

The adjudicator who considered Mrs A's complaint concluded that it should be upheld. In summary, the adjudicator was of the opinion that the transfer exceeded the level of risk Mrs A would have been prepared, or should have been advised, to take. The critical yield required to match or exceed the pension available from Mrs A's occupational scheme was at the high end of the regulator's prescribed growth rates. As the occupational scheme benefits had guarantees attaching to them and represented a significant proportion of Mrs A's retirement provision, the advice to transfer was unsuitable. Furthermore, the investment of the entire transfer value into one medium to high risk fund was not appropriate and did not accord with Mrs A's recorded attitude to risk.

RS&RL did not agree with the adjudicator's findings and requested that the case be passed to an ombudsman for a final decision. No further comments were submitted by the parties.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have reached broadly the same conclusions as the adjudicator, and for the same reasons.

Mrs A received advice in relation to nearly 19 years of accrued pension preserved in her former employer's defined benefit scheme. This was a significant proportion of her likely overall pension provision (not least because she had been made redundant and was not yet working again at the time of the advice). It was recorded that Mrs A was a "balanced" investor and therefore would accept only a moderate degree of investment risk with her pension. She had modest assets and savings at the time. It does not appear that Mrs A was a sophisticated investor, and a transfer of this nature is a complex issue with a variety of inter-relating factors to be taken into account.

At the time of the advice in 2008, illustrations of future pension benefits were being made on assumed growth rates of 5%, 7% and 9%, in accordance with regulatory requirements. On the assumption that the transfer was invested in a fund with a 1% annual management charge, the required yield to match the guaranteed benefits being given up was 8.3%. To provide higher benefits on retirement, a yield of say 1% more would be required. This would then give a required rate of return of 9.3%. In my opinion, this constitutes a high risk transaction for Mrs A, and there was a high risk that on retirement after transferring, the benefits would be lower than they would have been from the former scheme.

It appears that Mrs A's decision to transfer her preserved pension was in part motivated by her reluctance to leave her pension with her former employer. I also note that she had experienced some difficulty obtaining accurate information from the trustees of her occupational scheme. This may have influenced her desire to transfer her pension out and gain some control over its investment. However, in my view, a financial adviser ought to ensure that their client fully understands the financial risks of leaving a defined benefit pension scheme, even if on an emotional level the client would prefer a clean break.

It may be necessary in some circumstances for an adviser to proceed only on an 'insistent customer' basis, if the client still wishes to proceed with a transfer, against the adviser's advice.

RS&RL has said that Mrs A required her pension to be invested in an ethical/environmental fund, and that this meant deviating from its normal approach to investment. Mrs A denies that she had a specific requirement in this regard. The evidence on which RS&RL relies is the 'Pension Transfer Analysis Application' form and 'Risk Profile Questionnaire' completed at the adviser's first meeting with Mrs A. These record: *"Have discussed option to invest in future industries and/or climate change funds for an ethical/green style of investment"*.

I cannot agree that this was sufficient to treat Mrs A as having a *"specific investment requirement"* that meant that it was necessary or appropriate for RS&RL to recommend that she invest her entire transfer value in one recently launched 'global climate change fund' which was stated to have a 'sector risk rating' of 8 out of 10 (10 being the highest risk). This recommendation did not match Mrs A's stated medium attitude to risk. Based on the evidence available, I am not persuaded that Mrs A insisted on this particular fund contrary to any recommendation of the adviser to diversify across a range of funds determined by her attitude to risk (as RS&RL has suggested).

I am not satisfied that Mrs A had sufficient experience of pension transfers to understand and evaluate the nature and degree of risk that she was being encouraged to take. I am also not satisfied that her circumstances suited the assumption of that risk. I consider it more likely than not that Mrs A relied largely on the recommendation made by RS&RL in making the decision to transfer. RS&RL has said that Mrs A would have been familiar with the potential risks involved because she had previously transferred accrued pension from another former employer. I do not agree that arranging a transfer from one defined benefit occupational scheme to another would indicate knowledge of the risks associated with transferring to a personal pension plan.

Overall, therefore, in the circumstances I consider that Mrs A's complaint should be upheld.

There has been a dispute between the parties as to the advice Mrs A received from RS&RL contained in a suitability report dated 8 April 2008. Two versions of the letter have been provided to us as evidence – one from Mrs A and one from RS&RL.

The contents of the two versions are substantially different in material respects. Having carefully considered both versions, I have reached the view that the copy submitted by Mrs A is most likely to be an accurate reflection of the advice she received at the time. It is a copy appearing to be signed by the adviser, and Mrs A said it was provided to her at the time the advice was given. The other version of the suitability report is unsigned, and Mrs A said she first received a copy of it after raising her complaint with RS&RL.

I have also taken note of the fact that the copy held by Mrs A contains the correct details for the company at the time the letter is dated ie correct company registration number and registered address. The version provided by RS&RL contains incorrect details as to the company registration number and registered address.

RS&RL has said that it is unable to explain why Mrs A has a different copy of the suitability report to that held on its file. It said that it could only assume that the wrong version was issued/provided in error to Mrs A.

Despite Mrs A having received the 'wrong' version of the suitability report, RS&RL maintains that the copy it holds on file was in line with the advice provided and recommendations made.

I have decided that it is appropriate to make an award for distress and inconvenience in this case. It is my view that Mrs A has suffered distress and inconvenience as a result of receiving unsuitable advice to transfer her occupational pension scheme to a personal pension plan. This has been heightened by the dispute as to which version of the suitability report accurately reflected the advice provided to Mrs A. RS&RL was invited to comment on my proposed award, but declined to do so.

### **my final decision**

My final decision is that I uphold Mrs A's complaint. I direct Reid Scott & Ross Limited to:

1. pay Mrs A the sum of £500 for distress and inconvenience caused, and
2. carry out a loss assessment using the methodology determined by the regulator for the industry-wide pension review, but using the latest review date and assumptions published by the Financial Ombudsman Service on its website.

If redress is due then this – up to a maximum of £150,000 - should be paid in line with the methodology set down for the industry wide pension review.

Venetia Trayhurn  
**ombudsman**