

complaint

Mr W complains that The Royal Bank of Scotland Group Independent Financial Services Limited (RBS) didn't take into account the valuable Guaranteed Growth Rates (GGR's) his pension plans had when they advised him to transfer into a Self-Invested Personal Pension (SIPP) and stakeholder plan. He says this made the advice to transfer unsuitable causing him financial loss.

background

Mr W had some personal pension plans and a section 32 plan. He was 59 when he met with his adviser in 2008, and could take his benefits from these plans from 60.

His adviser recommended that he transfer his funds into a SIPP to get access to a discretionary management service and have more investment choices.

The section 32 plan contained a Guaranteed Minimum Pension (GMP) which couldn't be transferred into the SIPP. So, the adviser recommended that he transfer this into a stakeholder plan.

In 2013 Mr W complained to RBS that the advice he received was unsuitable bearing in mind his circumstances at the time.

One of our adjudicator's looked into Mr W's complaint and upheld it. He said, in summary:

- In 2007 RBS recorded that Mr W had a low attitude to risk for pension planning because it formed a large part of his overall wealth. Little evidence had been presented to explain why his risk attitude had changed to "*balanced*", six months later.
- The recommendation to transfer to higher risk funds with higher charges had little justification when it was agreed that the investment horizon would probably be around five years.
- The SIPP would've needed to provide returns of 5-6% over the five years to match the guarantees of his existing plans.
- Mr W could've accessed the benefits from his original plans at age 60. The transfer meant this option was no longer available as his retirement date was set at 65.
- There was little justification for the transfer from the section 32 plan to the stakeholder plan and it gave little benefit to Mr W.
- There was insufficient evidence to demonstrate Mr W would make use of the SIPP facility or the discretionary management service to justify paying the higher charges involved.
- Mr W had invested his pension plans in with profit funds for over 17 years. He was relatively close to retirement and it didn't seem likely that he would want to risk the substantial fund he had built up, over what would most likely be a limited investment horizon of around five years.

RBS didn't agree with our adjudicator's view and made the following points in response:

- The adviser had recorded at the time of the advice that guarantees could be lost and the tax free cash could be impacted. However, Mr W would've benefitted from greater tax free cash on retirement if he transferred. He also stated he was prepared to accept a greater amount of risk to meet his objectives.

- Mr W was a very experienced investor who had invested in a loan trust, international bond and an equity portfolio with RBS. RBS thought this showed he would've appreciated the discretionary management service and would've understood the benefits of investing in a SIPP generally.
- RBS had calculated the possible loss in line with the adjudicator's recommendation. It said Mr W had made a substantial gain as a result of the transfer and no compensation ought therefore to be paid.

The adjudicator wrote to Mr W to explain that whilst he still regarded the advice as being unsuitable, as there was no loss he couldn't uphold the complaint. However, Mr W responded and explained that he accepted he had invested in the SIPP, but this was as a result of advice from RBS. In addition his investments with RBS over the years had been as a result of its advice and he wasn't an experienced or knowledgeable investor.

He said he believed that RBS had missed a contribution made to his SIPP of around £185,000 when calculating the redress. If the calculation had been done correctly it would have shown a substantial loss instead of a gain.

The adjudicator asked RBS to reconsider its position in light of Mr W's comments around the calculation. The adjudicator agreed it did seem the SIPP contribution had been missed.

RBS responded and accepted that the SIPP contribution hadn't been included. However, it maintained that the advice given was suitable for the following reasons:

- Mr W was an experienced investor and was in a position to accept a greater element of risk regarding his pension provision.
- His objectives were to take benefits no earlier than age 65, to self-invest using RBS managers and to consolidate his pensions.
- He was advised that he would lose valuable guaranteed benefits if he transferred.
- The SIPP was reviewed in 2009 and 2012. It was confirmed that the investments had performed well in the circumstances and that Mr W wanted to maintain the level of risk he had already accepted.
- Although stating that he was a cautious investor Mr W had in fact invested in a number of risk based products since 1998.

Mr W responded to RBS's points. He said:

- He was disappointed that RBS hadn't provided a further calculation to show any potential financial loss.
- The risk based products he had previously taken out had all been as a result of advice given by RBS. He trusted its guidance and wasn't financially sophisticated.
- He has been successful in his industry. But, this didn't make him a knowledgeable investor.

As agreement couldn't be reached the case was passed to me to consider.

I asked our adjudicator to check with RBS whether Mr W had suffered any loss transferring his GMP benefits into the stakeholder plan. This wasn't clear, so RBS was told that I may consider making a redress order to cover any potential loss. RBS didn't respond on this particular point, but said that the ombudsman had obviously not given consideration to its earlier representations.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint, including for the avoidance of doubt RBS' representations as to why this complaint shouldn't be upheld. Having done so, I have come to the same conclusion as the adjudicator, and for broadly the same reasons.

At the time of the recommendation Mr W was around five years from his likely retirement age. He had a significant fund that had been invested mainly in with profits which contained a GMP and some GGR's. The GGR's meant his pension was guaranteed to grow by at least 4% per annum even if he deferred the benefits to beyond his selected retirement age.

The advice to transfer was on the understanding Mr W was aware of the implications of losing these guarantees. It was also based on his desire to use a discretionary management service and a self-invest facility. RBS has put forward that Mr W was an experienced investor who held various investments with it, and was happy to take more risk to potentially improve his pension benefits.

However, based on the evidence I have seen within the fact find and suitability report, I am not satisfied that the advice he was given was suitable. The prospect for growth was limited due to investment horizon of around five years, and because of the higher charges within the SIPP. Mr W would've needed to see growth of between 5 and 6% to outperform his existing plans. Because of the guarantees involved I don't think Mr W was given clear enough information so that he could make an informed choice about the risk he was taking.

The GMP element of his fund was transferred to a stakeholder plan because it couldn't be transferred into his SIPP. It couldn't be left behind with his existing provider if he transferred the non GMP elements. So, having found that the advice to transfer into a SIPP was unsuitable, it follows that I think this advice was unsuitable too.

In assessing what would be fair compensation, I have looked to put Mr W as close to the position he would have been in, more likely than not, if he hadn't been given unsuitable advice.

I take the view that Mr W would have continued to invest in his existing plans with the benefit of the guarantees that existed. I am satisfied that what I have set out below is fair and reasonable given Mr W's circumstances and objectives when he invested.

what should RBS do?

To compensate Mr W fairly, RBS must:

- Separately compare the performance of Mr W's investments in his SIPP and Stakeholder plans to the investment he could have obtained in his original plans and pay the difference between the *notional value* and the *actual value* of the plans. If the *actual value* is greater than the *notional value*, no compensation is payable.

RBS should also pay interest as set out below.

If there is any loss, RBS should pay such amount as may be required into Mr W's pension plan, allowing for any available tax relief and/or costs, to increase the pension plan value by the total amount of the compensation and any interest.

If RBS is unable to pay the total amount into Mr W's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the total amount should be reduced to *notionally* allow for any income tax that would otherwise have been paid.

The *notional* allowance should be calculated using Mr W's marginal rate of tax at retirement.

For example, if Mr W is likely to be a basic rate taxpayer in retirement, the *notional* allowance would equate to a reduction in the total amount equivalent to the current basic rate of tax. However, if Mr W would have been able to take a tax free lump sum, the *notional* allowance should be applied to 75% of the total amount.

- Pay to Mr W £250 for the trouble and upset he has been caused by this.

Income tax may be payable on any interest awarded.

investment names	Status	benchmark	from ("start date")	to ("end date")	additional interest
(Plan 1) RBS SIPP (Plan 2) Stakeholder	Transferred	The original plans that were held at the time of the advice	date of investment	(Plan 1) date of my decision (Plan 2) date transferred out of the stakeholder plan into another plan	8% simple per year from date of decision (if compensation is not paid within 28 days of the business being notified of acceptance)

actual value

This means the actual amount payable from the investment at the end date.

notional value

This is what the previous investment would have been worth at the end date had it remained in the same funds.

Any additional sum paid into the investment should be added to the *notional value* calculation from the point in time when it was actually paid in.

If the notional value of the part of the plan representing his section 32 GMP benefits is insufficient to cover the cost of his GMP, then the notional value will be the actual cost of providing those guaranteed benefits.

The Royal Bank of Scotland Group should provide details of its calculation to Mr W in a clear, simple format.

my final decision

I uphold the complaint. My decision is that The Royal Bank of Scotland Group Independent Financial Services Limited should pay fair compensation as set out above.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr W either to accept or reject my decision before 30 December 2015.

Kim Parsons
ombudsman