

## **complaint**

Mrs H complains about advice given to her by Intrinsic Financial Planning Ltd. She says she wasn't aware of the monetary value of the charges that were applied to her pension on transfer. She believes the transfer wasn't in her best interests and that she's worse off as a result.

## **background**

Mr and Mrs H met with their new adviser, following the retirement of their previous one, in early 2016 when they agreed to discuss their finances. Mrs H had two paid up pensions with a value of around £40,000. A recommendation was made to transfer into a new plan with a 5% initial and 1% ongoing adviser charge.

Mrs H said she didn't receive a suitability report, and when she complained about the transfer she was given a copy of the report. She said that was the first time she'd been aware of the initial charge and wouldn't have gone ahead if she'd been aware at the time of the advice. Intrinsic didn't uphold the complaint and said she had been made aware of the charge through a variety of documents.

One of our adjudicators investigated the complaint. He felt it should be upheld. He concluded that the charges for the new plan were higher. This contradicted Intrinsic's reasoning that the transfer would give Mrs H lower fees.

The adjudicator noted that there was no comparison to show that the transfer was in Mrs H's best interest. He thought that, with the size of the fund, there was insufficient justification for recommending the transfer. A stakeholder pension would have met Mrs H's needs.

Intrinsic disagreed. They pointed to the suitability report which explained the reasons for the transfer. They said it explained the difference in charges between the plans and set out the adviser's reasons for recommending the transfer.

The adjudicator wasn't persuaded to change his mind. He said the report suggested that the new plan would have to grow at nearly 3.5% more than the previous plan to match the benefits. In addition, he referred to the regulator's thematic review of the quality of pension switching advice from 2008. He felt that, in this case, there were elements of the criteria the regulator had considered that he thought applied. He didn't believe the extra cost of the new plan was justified to Mrs H or that there was a good reason to switch.

## **my findings**

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 have come to the same conclusion as the adjudicator and for broadly the same reasons.

The regulator issued a report in December 2008 entitled “*quality of advice on pension switching*”. The report summarised the findings of their thematic review of pension switching advice and gave examples of good, compliant and poor practices it found on the quality of advice given since pensions A-day. It noted the following as examples of what it considered unsuitable advice.

- *A pension incurring extra product costs without good reason (this outcome involved assessing cases where, for example, the reason for the switch was for investment flexibility, but this was not likely to be used; the reason was fund performance, but there was no evidence the new scheme was likely to be better; or the reason was flexibility of a drawdown option, but there was no evidence that this option was needed).*
- *A pension that was more expensive than a stakeholder pension, but a stakeholder pension would have met the customer's needs.*
- *A more expensive pension in order to consolidate different pension schemes, but where the extra cost was not explained or justified to the customer.*

I haven't seen evidence of a good reason for the extra product costs that were incurred upon transfer. Mrs H had a fund size of around £40,000. Intrinsic had said that one of the reasons for transferring was to benefit from lower charges. However, from the information it provided with the suitability report I can't see that Mrs H would benefit from lower charges, or indeed that a comparison of the effect of charges between the new and existing plans was issued to her.

Mrs H hadn't indicated that she was unhappy with her existing pension or suggested that she wanted to transfer. She wasn't contributing to the plan as she wasn't working. So, I'm not persuaded that she needed the options of self-investment or flexibility that the recommendation was designed to give her. I think a stakeholder product would most likely have met her needs had she wished to transfer.

I agree with the adjudicator that there is insufficient justification for recommending this transfer and I can't see that it was in Mrs H's best interests. Mrs H complained because she says the charges weren't disclosed to her. She complained as soon as she received the suitability report. It therefore seems likely to me that the charges hadn't been discussed previously. However, even if the charges were disclosed I don't think the advice was suitable. The charges were higher after the advice. I think that was unsuitable for Mrs H.

### **fair compensation**

My aim is to put Mrs H as close to the position she would probably now be in if she had been given suitable advice.

I take the view that Mrs H would have invested differently. It is not possible to say *precisely* what she would have done differently. But I am satisfied that what I have set out below is fair and reasonable given Mrs H's circumstances and objectives when she invested.

**what should Intrinsic do?**

To compensate Mrs H fairly, Intrinsic must:

- Compare the performance of Mrs H's investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investment. If the *actual value* is greater than the *fair value*, no compensation is payable.

Intrinsic should also pay interest as set out below.

If there is a loss, Intrinsic should pay such amount as may be required into Mrs H'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 Intrinsic is unable to pay the total amount into Mrs H's pension plan, it should pay that amount direct to her. 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 Mrs H's marginal rate of tax in retirement. Mrs H is likely to be a basic rate taxpayer in retirement, the notional allowance should equate to a reduction in the total amount equivalent to the current basic rate of tax. However, Mrs H 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 Mrs H £100 for the disruption caused to her retirement planning.

Income tax may be payable on any interest awarded.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
Aegon SIPP	still exists	FTSE WMA Stock Market Income Total Return Index	date of investment	date of my decision	8% simple a year from date of decision to date of settlement

***actual value***

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

***fair value***

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

### **why is this remedy suitable?**

I have decided on this method of compensation because:

- Mrs H wanted capital growth and was willing to accept some investment risk.
- The WMA index is made up of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.
- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mrs H's circumstances and risk attitude.
- Mrs H has not yet used her pension plan to purchase an annuity.

### **my final decision**

I uphold the complaint. My decision is that Intrinsic Financial Planning Ltd should pay the amount calculated as set out above.

Intrinsic should provide details of its calculation to Mrs H in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs H either to accept or reject my decision before 4 June 2018.

Roy Milne  
**ombudsman**