

## complaint

Mrs A is unhappy with the advice she received from Legal & General Assurance Society Limited ('Legal & General') in 1993 to transfer the benefits she held with her then employer's occupational pension scheme to a Personal Pension Plan ('PPP') with Legal & General.

Mrs A says she was not made aware that the value of benefits under the PPP could be less than those guaranteed under the occupational pension scheme. She also said that the associated risks of the transfer were greater than she was prepared to accept.

## background

At the time of advice in 1993, the adviser completed a Personal Financial Analysis ('PFA') more commonly known as a fact find. The PFA showed Mrs A was aged 31, married and had three dependent children. She was a self-employed training consultant with estimated earnings of £14,000 per annum on a contractual basis. She held a joint mortgage with her then partner and held no savings/investments of her own. The PFA recorded that Mrs A had a 'balanced' attitude to risk.

Legal & General explained in its letter of June 1993 titled 'Transferring your pension benefits' that *"taking your transfer value of £20,451.00 an investment return of at least 10.2% pa would be required to match the retirement benefits from your previous employer's scheme. The attached analysis gives details of how this figure has been calculated"*.

The Transfer Value Analysis (TVA) showed:

- On LAUTRO lower rate projection basis, assuming an investment return to retirement of 8.5% per annum, 58% of the benefits would be matched.
- On LAUTRO higher rate projection basis, assuming an investment return to retirement of 13% per annum, 233% of the benefits would be matched.

In June 1993, a total amount of £20,451 was transferred to Legal & General from the ceding occupational pension scheme which included £6,172 of protected rights benefits. Legal & General invested the benefits equally into the managed and with-profits funds in keeping with Mrs A's 'balanced' attitude to risk.

One of our adjudicators investigated this complaint and wrote to Legal & General in December 2013, explaining that in her opinion, the complaint should be upheld. She explained that the advice to transfer the retirement benefits guaranteed under the occupational pension scheme was not suitable for Mrs J's circumstances or in line with her ability to tolerate risk. The adjudicator did not agree with Legal & General that Mrs A held a 'balanced' attitude to risk or she could tolerate such a level of risk.

Legal & General responded to the adjudicator's assessment and said it did not agree that the recommendation was unsuitable for Mrs A. It made the following comments:

- It appreciated the adjudicator felt that Mrs A's recorded attitude to risk was not consistent with her circumstances or that her occupation would not have provided her with sufficient understanding of investment risk. However, it felt that her full circumstances and the nature of the transaction was not considered fully by the adjudicator in reaching her conclusions.

- It maintains *“the important consideration is therefore her expected circumstances in the next 29 years, rather than purely looking at her past experience or her circumstances immediately at the point of sale”*.
- It accepts there are no definitions of the attitudes of risk in the PFA but there were three distinct options. It says *“the fact that ‘balanced’ was chosen is a clear indicator that Mrs A was willing to accept risk. Had she not be willing to do so, I would expect her to have been recorded as ‘very cautious’; the lowest of the available options”*.
- Mrs A met with the adviser again in 1996 where her attitude to risk was recorded as medium; therefore, it demonstrates further that Mrs A was willing to accept some risk. It should be noted this meeting was not to discuss her pension provision.
- She was provided with a TVA and the adviser would have explained the contents of the document to her. The TVA is presented in a simple way which would have allowed Mrs A to understand whether the critical yield of 10.2% was appropriate.
- It explained *“when considering the suitability of the advice provided we must consider what was reasonable at the time and should not assess this with the benefit of hindsight some 21 years later”*.
- It said *“the rates set by the regulator in 1999 for Financial Viability Tests (‘FVT’) we see that for a pension transfer in 1993, for someone with 29 years until retirement, the interest rate was 10.9%. Given that for a transfer in 1993 the interest rates ranged from 9.5% for 0 years to retirement, to 11.0% for 30+ years to retirement, a critical yield 0.7% below the FVT rate is substantially below it”*.
- It noted the adjudicators comment that the guaranteed nature of Mrs A’s preserved benefits *“would have been more valuable to her in the long-term”* but it considers this statement is being made with the benefit of hindsight.
- It believes the adjudicator only considered what was documented about Mrs A’s attitude to risk but does not consider the suitability of the advice.

The adjudicator responded to Legal & General’s comments and said:

- It would not have been for Mrs A to determine whether she held a balanced or a cautious attitude to risk. It was the responsibility of the adviser to investigate the risks Mrs A would be able to afford to take and recommend a suitable course of action thereafter.
- That *“the FVT is indicative of a rate of return that would be acceptable for individuals with a medium attitude to risk. The FVT pass was a narrow pass for a medium attitude to risk. So, for a cautious investor, the same FVT result would, in my view, represent an unacceptable level of risk that would need to be taken to make the transfer viable”*.

Because the adjudicator and Legal & General were unable to reach an agreement, the case has been referred to me.

### **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

A transfer from a defined benefit scheme to a personal pension arrangement, where the eventual benefits are determined by investment performance and annuity rates at retirement, carries the risk of producing a smaller pension than that available under an occupational pension scheme. In my opinion the degree of risk in the transfer must be judged not only in terms of investment and annuity rate risk but must also assess the transaction in the context of the investor's overall circumstances.

I note the comments made by Legal & General about the rate of return required to match or exceed the guaranteed benefits Mrs A was giving up by transferring her funds to a PPP. The yields within the regulator's FVT range indicate the level of investment return and thus the risk that could be reasonably tolerated by an investor with a medium/balanced attitude to risk. I am not persuaded though that as, ostensibly, the critical yield in this case was below the regulator approved FVT that the advice to transfer was therefore suitable.

I am satisfied that Mrs A should not have been classified as being able to tolerate investment into assets presenting a medium level of investment risk. My opinion is that Mrs A was only able to accept a low level of investment risk. Consequently, an investment yield significantly lower than the FVT figure of 10.9% and the actual critical yield of 10.2% quoted by Legal & General in its recommendation would have been more appropriate in deciding if the transfer was suitable.

I note the PFA showed only three categories of risk, none of which was defined. I have not seen any persuasive evidence that the risk categories were explained to Mrs A by the adviser or that Mrs A fully understood the risks associated with transferring her guaranteed benefits to a PPP.

I acknowledge that Legal & General have said that Mrs A confirmed her attitude to risk as being 'balanced' because that is what she indicated on the PFA. However, the PFA only indicated three categories of risk, specifically '*Very Cautious, Balanced, Speculative*'. I am not persuaded such categorisation, in the absence of further explanation, is particularly meaningful or informative. I also note that these categories of risk made no reference to the context in which they were supposed to apply – in Ms A's case, retirement planning.

I also note that the PFA was primarily directed towards Mrs A's husband's financial details, described as 'Self' in the first column whereas Mrs A's details are completed in the secondary column headed 'Spouse/Partner'. The priority given to the 'Self' column, in my opinion, means that the PFA did not properly take account of Mrs A's overall circumstances and the PFA alone cannot be relied on as a definitive illustration of Ms A's financial circumstances.

I am persuaded by the evidence that Mrs A's accrued service within her occupational pension scheme represented a significant amount of pension provision for Mrs A at the time. Mrs A had been out of full time employment since 1987; her future employment prospects were uncertain and hence the opportunity to accrue further pension benefits could not be

predicted with any degree of certainty. Furthermore, the benefits transferred represented all of Mrs A's guaranteed benefits at that time.

I am not persuaded that the circumstances described above are consistent with the degree of risk which Mrs A was either able or prepared to accept; therefore I conclude that the advice to Ms A to transfer her benefits to a PPP was unsuitable.

**my final decision**

My final decision is that I uphold Mrs A's complaint.

I direct Legal & General Assurance Society Limited to perform a loss calculation using the methodology determined by the regulator for the industry-wide Pension Review, but using the latest assumptions published for cases that fall outside of the review.

If a loss is found then Legal & General Assurance Society Limited should pay redress to Mrs A in accordance with the methodology as set out in the Pension Review guidance.

Terry Connor  
**ombudsman**