

## The complaint

Mrs B complains about advice given to her by The Royal London Mutual Insurance Society Ltd (RLM) to transfer the benefits from her defined benefit occupational pension scheme (DB scheme) to a Section 32 pension plan.

At the time the advice was provided, it was a different firm providing that advice, which RLM has since acquired and is now responsible for. For ease of reference, in this decision I will refer to RLM only. Further, Mrs B has been represented by a firm of solicitors in bringing this complaint, both to RLM and this Service. Again, for ease of reference, I'll refer to the representative's comments as being those of Mrs B.

## What happened

RLM has provided us with extremely limited evidence from the time of the advice and pension transfer. Mrs B has told us she has negligible recollection of what happened at the time but has provided some information about her circumstances. So, the detail below is taken from both of these sources.

Mrs B started working for a company in 1981, when aged 17 years. In April 1988, she joined that company's DB pension scheme. She left the company in June 1992, at which point she stopped paying into the DB scheme.

Later in 1992, she was approached by one of RLM's advisors, and in November 1992 agreed to transfer the benefits accrued within her DB scheme to a Section 32 pension with RLM. The transfer value was £2,713. At the time of the advice and transfer, Mrs B's circumstances were as follows:

- She was 28 years of age and had been married the previous year.
- She and her husband had their first child in early 1992 and their second child in 1994.
- Accordingly, Mrs B wasn't in employment at the time, nor was it anticipated that she'd be returning to employment at any time soon.
- Mrs B's salary when she stopped working was £7,432 per annum (pa)
- Mrs (and Mr) B lived in a home owned (with a mortgage) by Mr B before their marriage
- Mrs B recalls, as a family at the time, they were "doing OK financially, but not flush with spare cash", given they only had one household income by then.

In 2021, Mrs B became aware that she may have cause for complaint about what RLM's advisor told her in 1992, so she complained to RLM, raising the following points:

- The Section 32 Policy wasn't suitable for her needs.
- RLM's advisor didn't undertake appropriate enquiries with her to establish her attitude to risk (ATR), or undertake a detailed 'fact-find' – so didn't have full knowledge of her financial circumstances.
- The advisor didn't discuss the risks of transferring, or fully explain the fees and charges.
- And, she'd lost out financially as a result of these issues.

RLM explained Mrs B's DB scheme was 'contracted out' of the State Earnings Related Pension Scheme (SERPS), and because of this they'd guaranteed to provide a minimum level of pension (the 'GMP') when she reached her retirement age (60). At retirement, they'd calculate the benefits Mrs B would receive from the RLM pension and compare it to the GMP amount - the higher amount would be paid, with a potential lump sum option too.

RLM also referred to the industry-wide 'pension review' which commenced in 1994. The advice and transfer of Mrs B's DB policy was caught by the review. However, because Mrs B had moved by the time RLM contacted her about this, and she didn't receive their enquiry letters dated January and February 1999, she wasn't included in the review. RLM explained that, as per the terms of Mrs B's policy, it was her obligation to inform them of any change of address, which she hadn't done. They acknowledged the only way to now find out if Mrs B had suffered a financial loss as a result of the advice she'd received was to carry out a review – but in line with FCA guidance issued at the time it was now too late to undertake the review, and RLM don't accept any new cases for review.

Unhappy with this response, Mrs B brought her complaint to this Service. Echoing the above complaint points, she repeated she didn't receive RLM's letters, and wasn't aware of a cause for complaint until she discussed her pension with a family member who'd also worked for the same company, but who hadn't transferred her DB pension – and which was now worth considerably more than Mrs B's RLM policy.

One of our Investigators first considered if this was a complaint this Service had jurisdiction to consider, given the event complained about took place 30 years ago. She concluded we did. RLM also consented to this Service reviewing the merits of Mrs B's complaint.

The Investigator then considered whether the advice provided to Mrs B was suitable for her needs. The Investigator concluded, because Mrs B was still many years from retirement age, she would have been able to take some risk with her pension, on the basis of a reasonable assumption the pension would grow over time. She compared the projected yearly pension payments for the RLM pension against the projected DB scheme pension. And whilst noting that investment rates of return turned out to be much smaller than anticipated at the time of the advice, she thought it was fair *at that time* for the advisor to have relied on those anticipated return figures when advising Mrs B, and when concluding/advising Mrs B could have been better off by transferring her DB scheme pension in the way she did.

Mrs B didn't agree with our Investigator and asked for an Ombudsman to consider her complaint – so it was passed to me to review and issue a Decision. And having considered the available evidence, together with Mrs B's comments, I reached a different conclusion to our Investigator. I set out my thoughts in a Provisional Decision, in which I said as follows:

*I've taken account of the rules and regulations, and regulator's guidance, that existed at the time Mrs B was advised by RLM. And where evidence is sparse or incomplete, I've reached my conclusions based on the balance of probabilities, and what I think is more likely than not to have happened based on the evidence and commentary I've received from both parties.*

#### Applicable rules, regulations and requirements

*RLM provided their advice in 1992. At the time, it (it's predecessor) was a member of the Life Assurance and Unit Trust Regulatory Organisation (LAUTRO). Their rules included a Code of Conduct which said advisors should exercise 'due skill, care and diligence' and 'deal fairly with investors'. Advisors were also required to give 'best advice' to investors, which included*

*not advising a client to cancel or transfer an occupational pension unless they genuinely believed it to be in the best interests of the consumer, and had clearly explained all of the relevant consequences and disadvantages of any such transfer. LAUTRO's rules also required firms to keep records to show their compliance with the regulatory requirements.*

*With all the above in mind, I've considered whether RLM's advice to transfer her DBS was in Mrs B's best interests. And, having considered the very limited evidence available, and thought very carefully about what Mrs B has since told us about her circumstances at the time, I don't think it was. I'll explain.*

#### *The Pension Review, and our Jurisdiction*

*In October 1994, the regulator at the time established an industry-wide review of certain pension business that had been carried out by authorised firms between 29 April 1988 and 30 June 1994. Consumers were approached by the pension firms and invited to have a review – to see if they'd been given inappropriate advice relating to their DB schemes between those dates. One of the three defined circumstances requiring a review was where a consumer was advised to transfer the benefits within their DBS to a private pension – which was the case here.*

*As I've set out above, it's not in dispute that RLM sent the review letters to Mrs B, nor that she didn't receive them because she'd moved from the address RLM had on file some years before they were sent. I should say that RLM weren't required to take any further steps to contact Mrs B at the time, and so didn't do anything wrong by closing their file on the matter.*

*But that doesn't mean the advice RLM's advisor gave to Mrs B at the time was in her best interests at the time, and it's that I now need to consider here.*

#### *RLM's advice, and was it in Mrs B's best interests?*

*As mentioned above, RLM should only have recommended the DBS transfer if it genuinely believed it was in Mrs B's best interests to do so. And if RLM's advisor genuinely thought that to be the case, the advisor would have needed to clearly disclose the advantages and disadvantages of transferring, and keep records showing it had done that.*

*Here, there are no such records, and so it's impossible for me to know whether RLM's advisor complied with their obligations. RLM have provided various documents connected with their interactions with the DBS scheme, including DB scheme valuations and transfer documents. They've also provided some internal documents which contain details on the value of, and the projections for, the RLM policy. But they haven't provided any documents that record Mrs B's circumstances at the time of the advice, or whether they asked about her retirement intentions, or her attitude to risk. There's no evidence the benefits of her DBS policy were explained to her. And I haven't seen any form of comparison of those benefits or analysis setting out why RLM believed it would have been in Mrs B's best interests to transfer out of her DBS.*

*But, RLM have provided a copy of a memo sent by their actuarial department to the 'district manager' dated 8 October 1992, commenting on Mrs B's pension enquiry. It said:*

*"If the client wishes to proceed, the following action should be taken:*

*Please advise the client that [RLM's proposed benefits] differs from those provided by the former scheme. It is important that the client considers the effect of this difference when comparing the benefits available.*

*...the previous scheme increases pensions in payment by 5.00%. [RLM] are not prepared to issue policies on that basis. Our quotation has been prepared on the basis the pension will increase by 3.00% per annum once payment commences."*

*So, not only was there a general obligation on the advisor to have properly discussed the advantages and disadvantages of transferring, the advisor was also specifically told by RLM's own actuaries to explain Mrs B's DBS pension payments, when taken, would grow at a proportionally faster rate than her proposed RLM pension would, and these compound payment increases would increase for the rest of her life. Again, there is no evidence that this specific request was complied with.*

*Mrs B says she has no recollection of the meeting that took place between her and RLM's advisor – she doesn't recall whether it took place in her home, or at an office. She has no recollection of any discussions, or recommendations being made, and no recollection of asking for a meeting to consider her pension options – her only explanation for the meeting is that she recalls her (now ex) husband may have had an endowment product with RLM's predecessor which was connected with his mortgage, and that may have acted as the means of introduction.*

*At the time of the advice, Mrs B had recently stopped working to start a family, the initial meeting having taken place in the months after she'd given birth to her first child. She's told us that her focus at the time was very much centred on her new family, and that thinking about her pension wouldn't have been on her agenda at that time. There was no immediate prospect of her returning to work, and no prospect of re-starting payments into her pension.*

*I think this is important. At the time of the advice, Mrs B benefitted from a pension, albeit relatively small, that provided guarantees in her retirement. These were valuable benefits, providing a certain income in retirement, particularly given there was no immediate prospect of Mrs B making any payments to increase her personal pension provisions in the foreseeable future.*

*That's not to say, in theory, that Mrs B wouldn't have been willing to explore whether a personal pension may provide a better long-term retirement option, paying higher benefits than her DBS. At the time of the 'advice', it must be acknowledged that stock market returns – upon which the values and benefits of personal pensions were calculated - at that time were very healthy. The advisor would have had a reasonable expectation that a personal pension may have performed well enough to provide higher benefits than Mrs B's DBS would provide. However, I don't think that's the point here.*

*I don't doubt the prospect of a potentially higher income in retirement may have sounded attractive to Mrs B. However, RLM advisor's role was to understand what Mrs B needed, and recommend what was in her best interests, rather than simply recommend a product based on potentially higher returns.*

*Ultimately, for all of the reasons set out above, I'm not persuaded that Mrs B was provided with suitable advice by RLM in relation to her DB scheme pension transfer.*

*At this point I must also consider if Mrs B would have chosen to go ahead with the DB transfer at that time, even if RLM had advised against it. However, based on Mrs B's comments to our Service, and looking very carefully at her circumstances at the time, I think it's highly unlikely she would have done so.*

*As I've said, Mrs B had stopped working and there was no foreseeable return to pensionable employment in the years ahead. Furthermore, she's said both she (and her husband at the*

*time) were cautious with their finances and would certainly not have done anything that would have been seen at the time to be a 'gamble'. Given her circumstances at the time, I've no reason to doubt her recollection. Instead I'm persuaded that, if RLM's advisor had recommended Mrs B remain in her DB scheme, Mrs B would have followed that advice.*

*In light of the above, I think RLM should compensate Mrs B for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.*

### **What I've decided – and why**

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

Mrs B has responded, accepting my Provisional Decision. RLM have responded, confirming they had nothing further to add. No further evidence has been provided for me to consider.

Accordingly, I've no reason to depart from the conclusions I reached in my provisional decision and uphold Mrs B's complaint for the reasons previously stated.

### **Putting things right**

A fair and reasonable outcome would be for RLM to put Mrs B, as far as possible, into the position she would now be in but for the unsuitable advice. I consider Mrs B would have most likely remained in the occupational pension scheme if suitable advice had been given.

RLM must therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement PS22/13 and set out in the regulator's handbook in DISP App 4:

<https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter>.

For clarity, Mrs B has not yet retired, and she has no plans to do so at present. So, compensation should be based on her normal retirement age of 60, as per the usual assumptions in the FCA's guidance.

This calculation should be carried out using the most recent financial assumptions in line with DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mrs B's acceptance of my decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, RLM should:

- calculate and offer Mrs B redress as a cash lump sum payment,
- explain to Mrs B before starting the redress calculation that:
  - their redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
  - a straightforward way to invest their redress prudently is to use it to augment their DC pension
- offer to calculate how much of any redress Mrs B receives could be augmented rather than receiving it all as a cash lump sum,
- if Mrs B accepts RLM's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mrs B for the calculation, even if she ultimately decides not to have any of their redress augmented, and

- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mrs B's end of year tax position.

Redress paid to Mrs B as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, RLM may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mrs B's likely income tax rate in retirement – presumed to be 20%. So, making a notional deduction of 15% overall from the loss adequately reflects this.

### **My final decision**

For the reasons set out above, I uphold Mrs B's complaint against The Royal London Mutual Insurance Society Limited and require them to pay Mrs B the compensation amount as set out in the steps above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 10 November 2023.

Mark Evans  
**Ombudsman**