

## **The complaint**

Mr L complains that Robert Graham Harvie trading as R G Harvie (RGH) gave him unsuitable advice to transfer the benefits from his former Occupational Pension Scheme (OPS) to a section 32 plan. Mr L believes this has caused a financial loss.

Mr L is represented in his complaint by a claims management company (CMC). But I'll only refer to him in my decision.

## **What happened**

Mr L had benefits in a former OPS. I understand that in 1988, an adviser called on him at home and advised him to transfer his OPS benefits into a section 32 personal pension plan with another provider – which I'll refer to as provider P. And that the transfer took place on 19 January 1989.

At the time of the advice, Mr L was 31 years old and employed. He was single and had no financial dependents.

There is very limited documentation available from the time of the advice. But RGH is listed as Mr L's agent on the transfer paperwork, as is a named adviser. The schedule issued on 2 February 1989 also stated: "*This contract was sold through an independent intermediary*".

Mr L originally complained to provider P in December 2022 about the advice. It said it hadn't provided advice for the transfer. And directed Mr L to RGH. Mr L's representative forwarded his complaint to RGH in February 2023.

RGH replied to the complaint. It said it'd never had contact with Mr L and that it hadn't advised him on his pension arrangements.

Unhappy with this response, Mr L brought his complaint to this service.

RGH told this service that it hadn't advised Mr L on his pension transfer. It said that the adviser named on the documentation relating to the transfer hadn't worked for it, but for a business which had become part of provider P. It said that this issue had previously been identified in three other cases with provider P that had been placed through its agency without its knowledge around 1988/89, one of which had already been considered by this service. RGH said that it'd asked provider P to remove the three cases from its agency.

RGH provided evidence that in the case placed through its agency without its knowledge that this service had already considered, we had decided that the business which had become part of provider P had given the advice.

RGH said it had no initial documents or suitability letter for Mr L. It said it had asked Mr L's CMC if it could forward copies of any correspondence from it, or details of who had called on Mr L, but received no response. RGH also said that Mr L recalled that the adviser had visited him at home. It said its business was office-based. And that it'd never made home visits for new pensions business.

Our investigator first considered whether the complaint had been brought in time. She felt that although it had clearly been brought more than six years after the event being complained about, Mr L hadn't become aware that he had cause for complaint until he'd seen an online advert in 2022. And as he'd complained within three years of this awareness, she felt the complaint was within this service's jurisdiction.

Our investigator went on to consider the merits of the complaint. She said that although it was likely that RGH had facilitated the transfer, there was no documentary evidence that RGH had advised Mr L. And that even if it had, there was no evidence to indicate what the advice was. So she couldn't consider whether any advice had been suitable. And therefore she couldn't reasonably uphold the complaint.

Mr L didn't agree with our investigator. He made the following points through his CMC:

- It felt our investigator considered that RGH was likely to have facilitated the transfer. But had found no evidence to show that RGH had advised Mr L, or what advice had been given. It was concerned about this view, as it felt it ignored Mr L's recollection of events.
- It said that Mr L had said that his adviser had visited him in person and had strongly advised him to transfer his pension, bringing three different quotes/projections on how well his pension would do if he transferred. He said he'd also been told that his pension had been performing at a low rate and that he'd make more money if he transferred.
- In summary, it said that Mr L had received advice to transfer his pension from RGH, and that he'd acted upon that advice. But even if he hadn't, it said that the evidence showed that RGH was recorded as the agents who acted for Mr L at the time and who had facilitated the transfer. It said that if this was the case then it had failed in its duty of care to Mr L, as it should've known that the transfer wasn't in his best interests.
- It felt that as our investigator seemed to consider it was likely that RGH had facilitated the transfer, despite it claiming not to have done so, that RGH wasn't telling the truth. It felt that it wouldn't have merely facilitated the transfer without giving advice to do so.

As agreement couldn't be reached, the complaint has come to me for a final decision.

### **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.

Before I considered the merits of this case, I considered whether the complaint had come to this service in time. I agree with our investigator – and for the same reasons she gave in her view - that this case is within our jurisdiction.

Having considered the merits of this case, I'm not going to uphold it. I know this will be disappointing for Mr L. I'll explain the reasons for my decision.

The documentary evidence from the time of the advice, and Mr L's testimony, both suggest that he did receive advice to transfer his pension from his OPS. So I'm satisfied that he was advised to transfer.

However, RGH has explained that it wasn't the advising agent in this case, despite being listed as such on the documentation from the time.

Our investigator considered that RGH was likely to have facilitated the transfer, but not advised on it. But, from the documentary evidence and testimony I've seen, I don't agree that RGH was involved in the transfer at all. I'm persuaded that the named adviser on the documentation from the time of the advice wasn't connected to RGH at all. And if provider P had actioned RGH's request to remove Mr L's case from its agency, I'm satisfied that RGH wouldn't have been asked to consider this complaint.

Even if I did consider that RGH had facilitated the transfer – which I don't - I couldn't fairly and reasonably uphold the complaint. I say this because there's no evidence about what the advice said. So it's not possible to determine whether any advice Mr L was given was unsuitable at the time.

As I noted earlier, I don't doubt that Mr L was advised on his transfer. But I can't reasonably say that RGH was responsible for that advice. Therefore I can't fairly or reasonably uphold this complaint.

### **My final decision**

For the reasons explained above, I don't uphold Mr L's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 13 November 2023.

Jo Occleshaw  
**Ombudsman**