

The complaint

Mr H complains about advice he was given to transfer the benefits of a defined-benefit (DB) occupational pension scheme, to a type of personal pension plan arrangement. He says the advice, which was apparently provided around 1991 was unsuitable for him. He believes this has caused him a financial loss.

Marx Insurance Services Ltd is the business complained about. To keep things simple, I'll refer mainly to "MISL".

Mr H has used a representative company to help him bring his complaint.

What happened

Mr H is complaining about the advice to transfer his armed forces pension scheme into a type of personal pension arrangement. There's no real doubt that such a transfer took place. However, this is a very difficult complaint to get to grips with. This is because Mr H simply hasn't been able to provide much information at all. He also hasn't retained any documentation which has aided us investigating this complaint.

Of course, I sympathise with Mr H and I understand how difficult it's been to remember the events of such a long time ago. These alleged events are from over 30 years past and I also understand Mr H has more recently been suffering ill health, which I'm very sorry to hear about.

One of our Investigators has looked into the complaint and said he didn't think we should uphold it. He noted the history of Mr H bringing this complaint initially against the 'new' pension provider. But this wasn't right because the firm was a provider of pensions and pension platforms, rather than a business which *advises* clients on pension transfers.

Mr H and his adviser then raised a complaint with another body, the Financial Services Compensation Scheme (FSCS), against a different firm, but this complaint didn't succeed either. Faced with a further complaint to our Service (the Financial Ombudsman Service), this time against MISL, our Investigator didn't think MISL had provided the alleged unsuitable advice. And so he said we shouldn't uphold Mr H's complaint.

Mr H still doesn't agree with this. Due to the issues remaining disputed and unresolved, I've considered his complaint. Having looked carefully at everything we have, I'm not upholding the complaint against MISL. I'm sorry to disappoint Mr H.

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.

The crux of the matter is whether the business Mr H is complaining against is responsible for the unsuitable advice which he alleges. I accept that he genuinely believes the advice to transfer wasn't in his best interests and that it has possibly caused him an overall financial loss. But as I've said, Mr H is represented in this matter and I'd expect his representative to

have the resources to bring the complaint, with supporting evidence, against the correct responsible business.

We know Mr H initially brought a complaint about his pension transfer against the pension provider, a firm I'll call "Firm P". Our Service, the Financial Ombudsman Service, investigated this complaint and concluded it wasn't responsible for the advice to transfer. This was on the basis that Firm P was a pension provider, rather than an adviser, and wouldn't have been responsible for the advice.

As the transfer took place in around 1991 Firm P speculated that another business, a firm I'll call "Firm DW", might have been involved in the advice although it was no longer trading. For this reason Mr H complained to the FSCS but it rejected the complaint on the basis that if Firm DW was involved, its connection with MISL might mean a complaint could be properly brought against MISL, for the original unsuitable pension transfer advice.

However, I'm afraid this doesn't necessarily mean that MISL is responsible for now answering Mr H's complaint. As our investigator pointed out, within the documentation shared by the ceding scheme via Mr H's representative, it seems another firm – I'll call this "Firm H" - requested authority in March 1991 to look into Mr H's pension affairs. In my view this would tend to signify that Firm H was advising Mr H in some capacity. Also dated March 1991, Mr H signed a letter of authority giving Firm H the relevant permissions. Firm H seems to have requested Mr H's DB pension transfer value at around the same period. I can't see any similar request for pension information from either Firm DW or the business which this complaint refers to now, MISL.

Mr H's representative has asked us now to decide which business to raise a complaint against. But I'm afraid this is a matter for it to decide. My understanding is that Mr H's representative substantially operates in the claims management sector and so I'd expect it to advise Mr H using the experience and resources it has.

Of course, I do accept it can be difficult to establish exactly what has happened, particularly from such a long time ago. However, I'm satisfied we have carried out a proportionate investigation into these matters on the very limited information provided to us. Mr H clearly has difficulty in remembering what happened and who spoke to him. And we have very little paperwork to refer to.

It's important here for me to be clear that in concluding MISL wasn't responsible, which is what I am saying is most likely here, there doesn't have to be evidence showing who *was* responsible for the advice; this isn't my role. This investigation is limited to MISL's actions and its alleged involvement in Mr H's armed forces pension transfer in the early 1990s. The evidence is more persuasive that MISL is not responsible for that advice.

Summary

I completely accept that there is a less than clear picture here of what really went on. However this was over 30 years ago. There is insufficient evidence showing that Mr H was personally advised by MISL. Having said that, I'd like to place on record that I certainly don't doubt Mr H's points of complaint are genuinely and honestly held. But the more persuasive evidence, in my view, is of a company (MISL) that didn't advise him.

So, like our investigator, I can't hold Marx Insurance Services Ltd responsible for providing unsuitable advice to Mr H because I don't think it did provide him with any advice at all. This is a conclusion I've had to arrive at on balance of probabilities, due to the lack of evidence.

I'm very sorry to disappoint Mr H.

My final decision

For the reasons I've given above, I am not upholding Mr H's complaint that he was provided by unsuitable advice by Marx Insurance Services Ltd.

In view of this, Marx Insurance Services Ltd doesn't need to do anything more.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 2 January 2024.

Michael Campbell
Ombudsman