

PENSION SCHEMES ACT 1993, PART X
DETERMINATION BY THE PENSIONS OMBUDSMAN

Applicant	Mrs Rosemary Green
Scheme	Unipart Group Pension Scheme (the Scheme)
Respondent	Unipart Pension Trustees Limited (Unipart)

Subject

Mrs Green complains that in March 2000 she was improperly persuaded during a personal meeting with an independent financial adviser (**IFA**) appointed by Unipart (to provide general pensions information) to transfer the deferred pension benefits available to her from the Scheme, a final salary arrangement, into the Keane Ltd Group Money Purchase Scheme (**the Keane Scheme**).

The Pensions Ombudsman's determination and short reasons

The complaint should not be upheld against Unipart because the evidence falls short of establishing that injustice was caused to Mrs Green as a result of any maladministration on the part of Unipart through their appointed IFA during his individual meeting with her in March 2000.

DETAILED DETERMINATION

Jurisdiction

1. As described above, this complaint concerns whether an IFA appointed by Unipart was giving advice to Mrs Green. I have not considered whether the IFA is directly in my jurisdiction (although it seems likely) because Unipart have responded to the complaint apparently accepting that he was acting as their agent.

Material Facts

2. In 1999, Unipart outsourced most of their Information Technology positions to other companies. Mrs Green's employment with Unipart was transferred to one such company, Keane Ltd.
3. Mrs Green was a member of the Scheme, which is a defined benefits arrangement. She received an announcement made by KPMG, the advisers to both Keane Ltd and the trustees of the Keane Scheme (a defined contributions scheme) on 10 March 2000 which said that:

"As you are aware, your active membership of the Scheme ceased on 7 December 1999. You must now choose how your benefits earned under the Scheme are to be provided. The options are set out below.

Option 1: Benefits remain in the Scheme

[Mrs Green would have been entitled to a deferred pension under this option.]

Option 2: Transfer of Pension Rights to the Keane Scheme

Your transfer value will fluctuate up to the date it is paid in line with changes in financial conditions. This transfer value, which has been calculated on an enhanced basis, is only available if you transfer at this opportunity to the Keane Scheme. You may request a transfer at a later date, or to an alternative scheme, but your transfer value may be lower than the figure shown above.

Please note that, should you decide to transfer the value of your Scheme benefits, actual benefits payable from the Keane Scheme will depend upon investment conditions up to and at retirement (including annuity rates) which cannot be guaranteed. It is possible that benefits earned in the Scheme will become less valuable if you transfer them to the Keane Scheme.

What to do next

You must make your decision regarding your Scheme pension rights and return the attached member Option Form...by 10 May 2000.

We stress that you should make sure that you understand the implications before you make a decision on your Scheme benefits. Please note that Unipart is arranging for an IFA to talk to members about the differences between the two schemes. Further details will be sent to you by Unipart shortly.”

4. Unipart sent Mrs Green a note dated 16 March 2000 which reiterated that the appointed IFA would only provide an impartial view of the differences between the Scheme and the Keane Scheme during a series of presentations taking place on 21 March. It also said that:
 - the IFA would give an objective assessment of the pros and cons of transferring pension benefits to the Keane Scheme and also be happy to take questions;
 - if she felt she needed written advice specific to her individual financial circumstances after listening to the IFA, she could make an appointment to see the IFA at a mutually agreed date;
 - Unipart would only be paying the IFA to give the talks; and
 - any individual financial advice from the IFA (or one of her own choice, if preferred) would at her own cost.
5. Mr H was another former employee of Unipart who had transferred to Keane Ltd. He acted as a go-between the Keane Ltd employees and the two companies and sent an e-mail entitled “Unipart Pension Transfer Advice” on 20 March 2000 to “Keane Employees” which said that:

“Following several adverse comments, Ms S (Unipart’s pension manager) has now arranged for the IFA to make an additional presentation on 29 March. As well as a group talk, he will also be available for individual advice (at Unipart’s cost) on that day.

If you require individual advice, please let me know when you will be available/not available on that day. I will then pass the info onto Ms S who will make the necessary arrangements.”

6. Mrs Green attended one of the presentations given by the IFA, Mr W, on 21 March during which three questions were asked that he could not answer immediately. Unipart sent the answers to the attendees on 23 March. The questions were:
- If a member chose to transfer his/her benefits in the Scheme to the Keane Scheme, did he/she have to invest the enhanced transfer value in the same funds and in the same proportions as his/her normal monthly contributions?
 - Could a member switch investment fund(s) for his/her enhanced transfer value at a later date?
 - Could a member obtain details of the standard cash equivalent transfer value of his/her benefits in the Scheme (if he/she decided to transfer to a personal pension arrangement)?”
7. Mrs Green accepted the offer made by Unipart for free “advice” from Mr W. Her recollections of the meeting on 29 March 2000 with Mr W are as follows:

“Before I saw the IFA, I was fairly certain I wanted to leave my pension at Unipart but the presentations had given me doubts, hence I requested individual advice. At this meeting, no formal analysis or written advice was given although Mr W did write some points on his own notepad...The advice was verbal and we discussed my personal financial position, including my salary, the number of years I had been in the Scheme and my retirement aspirations. Mr W asked me what I thought I should do and I told him my instinct was to leave it in the Scheme because the final salary was a safer scheme and I didn’t like the idea of “putting all my pension eggs in one basket”.

Mr W pointed out that the Keane Scheme investment had many years to grow, and that I could expect this investment to grow at a much higher rate than my Scheme pension, 8-10% being conservative. I raised my concerns about the risks but he reassured me. Mr W made a strong case to convince me it would be better to transfer to the Keane Scheme. I clearly remember he told me if I left my pension at Unipart then the salary it was based on would not reflect my actual salary when I retired, as it would be frozen at my December 1999 salary. I have since realised that as the Scheme pension would have increased in line with RPI or 5% this was of little relevance.

I was totally of the opinion he was giving me specific individual financial advice because we discussed my personal details...and owing to his greater knowledge of these things, I changed my

mind and accepted the buyout offer which he said was very generous, and transferred to the Keane Scheme.

The basis for my assertion that I will be worse off is on advice from my own IFA and this relates only to the portion of my pension that would have come from the buyout proceeds versus a deferred index linked final salary pension...

...I believe I will be £4,500-£5,000 pa worse off than if I had not taken the advice to transfer."

8. The Keane Scheme was closed in 2004 and Mrs Green's benefits in it were transferred into an AEGON stakeholder pension plan.
9. The Scheme ceased future defined benefit accrual on 31 December 2005.
10. Mrs Green was re-employed by Unipart and joined the new money purchase pension scheme sponsored by her employer in August 2011.
11. She subsequently complained to Unipart that she was improperly advised by Mr W to transfer the deferred pension available to her from the Scheme to the Keane Scheme in 2000. Unipart did not uphold her complaint.

Summary of Mrs Green's position

12. The "adverse comments" which Mr H refers to in his e-mail of 20 March 2000 (see paragraph 5 above) relates to Unipart informing their former employees who had been transferred to Keane Ltd that they should seek independent financial advice at their own cost before deciding what to do with their deferred benefits from the Scheme. Following complaints made by some of these employees of having to pay for advice given their circumstances, Unipart decided to also pay the costs of any individual meetings with Mr W. She says that she only made an appointment to meet Mr W individually on this basis.
13. She did not receive any information or advice from Keane Ltd, KPMG, Mr H or her colleagues on what she should do with her deferred benefits in the Scheme.
14. Mr W provided her with his advice without carrying out a critical yield analysis. He also did not provide her with a transfer value analysis report. She accepted Mr W's specific and impartial advice during the meeting because she thought that he was acting in her best interests.

15. At no point during their meeting did Mr W say that he was not giving her advice. If he had, she would have terminated their meeting immediately because she was merely looking for reassurance from him that she would be making the right decision by leaving her deferred pension in the Scheme. If Mr W had mentioned “the advantages of leaving the Unipart pension alone” either in his presentation or during their individual meeting this would have re-affirmed her view which was all she had wanted.
16. She has produced statements from several of her colleagues who she says also recall having been improperly recommended to transfer their benefits from the Scheme to the Keane Scheme by Mr W.

In particular, Mrs R asserts that:

- Mr W was hired by Unipart to give financial advice to those transferring from Unipart to Keane Ltd; and
- although she has no documentary evidence of her meeting with Mr W, she clearly recalls that he led her to believe that transferring her pension rights in the Scheme to the Keane Scheme would be in her best interests.

And Mr B says:

“When I was outsourced to Keane I remember taking advantage of the offer of free impartial financial advice provided by Unipart. I had a fairly clear idea of my intentions regarding my pensions but I saw no harm in receiving some free advice.

My recollections of the discussions held with the financial adviser are quite vague but I do recall him advising me to move my Unipart pension into the Keane alternative. As I was of the firm belief that it is not a good idea to have all my eggs in one basket and the “final salary” schemes such as the one operated by Unipart was a preferred option over the investment fund operated by Keane I chose to ignore this advice.”

17. In his e-mail dated 9 December 2013 to her, Mr H says that:

“...As they were individual sessions, what on earth was supposed to be discussed in detail other than the transfer or not of Unipart pensions to Keane. Unipart say I was no longer a pension rep but I was a trustee of the Keane Scheme and went on a training course for trustees...so I was well aware of pension issues.”

18. In his e-mail of 27 June 2014 to her, Mr H added:

“I was certainly under the impression that my meeting with Mr W was to discuss the pros and cons of either leaving my pension with Unipart or transferring it to Keane. I made it clear at the beginning of the meeting that I had already decided to leave it with Unipart and the IFA concurred with my view.”

Summary of Unipart’s position

19. Mrs Green took advice/and obtained information from a number of sources including Unipart, Mr W, Mr H, KPMG and Keane Ltd. As such, she took an informed decision and it is unreasonable to expect Unipart to take full responsibility for any adverse financial consequences of her decision to transfer her pension rights in the Scheme to the Keane Scheme.
20. Mr H was a spokesperson for the group of former Unipart employees who had transferred to Keane Ltd and he acted as a conduit for passing on information. He would not have been aware of the possible implication in terms of financial services regulation of referring to paid “individual advice” in his e-mail of 20 March 2000.
21. They paid Mr W to provide general information about pensions and the options available in order that an independent view could be presented to affected Keane Ltd employees during the presentations and the one to one meetings, if necessary. The purpose of the meetings was to enable employees to raise personal financial matters with Mr W in private. In their experience, former employees welcomed being given the opportunity to attend such meetings to raise any issues they may have about the general information being given which they did not wished to be revealed in an open meeting.
22. They do not, nor have they in the past, arranged for advice based on a complete analysis of an individual’s financial affairs (including pension benefits) to be provided to their (former) employees. If individual personal financial advice was required, this would be on the basis of a separate formal contract between the (former) employee and the chosen IFA.
23. Any information given by the IFA would have been general information in relation to the transfer value offered and the difference between a defined benefit and a defined contribution arrangement.

24. It is therefore highly unlikely that any formal individual advice was given to Mrs Green by Mr W to transfer her benefits from the Scheme to the Keane Scheme.
25. Mrs Green confirmed in her completed Option Form dated 5 May 2000 that she had read the announcement of 10 March 2000. She had therefore been sufficiently made aware that it was possible that her deferred benefits in the Scheme might become less valuable if she transferred them to the Keane Scheme.
26. There is however scant evidence to substantiate Mrs Green's assertion that she will be considerably worse off financially in retirement as a result of transferring the deferred benefits available to her from the Scheme to the Keane Scheme.

27. They say that:

"...we believe that her benefits should be viewed in totality. She became employed by Keane Ltd as a result of a TUPE transfer, which would have required that appropriate pension arrangements were available to replace the pension benefits provided by Unipart.

Moreover it may be relevant to compare other benefits and salary as well as her pension benefits to determine whether she has been disadvantaged financially overall.

...the transfer value paid in respect of members who TUPE transferred to the Keane Scheme was greater than the standard cash equivalent transfer value and therefore, in actuarial terms, would have provided a greater benefit than the Scheme, albeit we recognise that defined contribution benefits are dependent upon investment performance.

We have no information on the advice that may have been given to Ms Green as to her investment choices, which may have had a substantial impact on her financial position. Nor do we have any information on the transfer of benefits from the Keane Scheme to the stakeholder arrangement with AEGON. These choices may have had a substantial effect on the value of Mrs Green's pension "pot".

28. The offer to transfer Scheme benefits into the Keane Scheme on improved terms could easily have been seen as a good offer at the time.
29. Mr W refutes the allegations made by Mrs G against him. He says that:

"The object of a personal meeting was to clarify a person's understanding of the decision which they had to make without any actuarial calculations. If this was required I would have to meet the staff member privately and a fee would be charged. The company paperwork clearly confirms this point.

I do not remember the detail, or have my notes of our meetings, which were not meant to be kept as an accurate record as I would complete a fact find if we met again.

...factors I consider are important:

- All my presentations to the staff were witnessed by the Pensions Manager;
- The likely discussions between Mrs Green and me...
- The paperwork given to staff prior to my presentation...

...I made it quite clear before giving my talks...that I would only give information and that this was made clear to all staff.

After reading Mrs Green's testimony most of which I refute, she has not given me any reason why I should accept that my discussions on the various option could be understood as advice. I made it clear on each and every occasion that if an individual wished to have "advice" this would be arranged separately. Mrs Green did not avail herself to this."

Conclusions

30. Mrs Green's complaint centres upon her assertion that she sought and was given specific advice by the IFA appointed by Unipart, Mr W, which improperly persuaded her to transfer the deferred pension benefits available to her from the Scheme into the Keane Scheme. Although I have noted her claim that she was advised by Mr W that transferring her pension rights to the Keane Scheme would have been more appropriate than leaving them in the Scheme, there is, however, only verbal and no written evidence, either to confirm or deny whether or in what manner, such advice was given.
31. Mr H described the arrangement as to give "individual advice", but that was not a description given or endorsed by Unipart.
32. There is obviously a fine line between explaining the options available to Mrs Green and actively discouraging some of them, whether explicitly or implicitly. For example, it would have been reasonable to point out that the transfer value had been enhanced and so was higher than the normal value of the deferred pension in the Scheme. But the announcement made by KPMG on 10 March and, in particular, the note dated 16 March from Unipart which Mrs Green received made it reasonably clear just what the IFA's role was in this respect.

33. Unipart appointed the IFA to provide details of the differences between the two schemes and to assess objectively the advantages and disadvantages of transferring pension benefits from the Scheme to the Keane Scheme. It was therefore not in the remit of Mr W to provide independent financial advice to Mrs Green on behalf of Unipart.
34. Unipart clearly notified Mrs Green that they would only be remunerating the IFA on the above basis and the cost of obtaining any independent financial advice from Mr W or another IFA of her own choice would be her own responsibility. I accept that when Unipart offered to pay for individual meetings with Mr W, such meetings would have been intended to be conducted by the IFA on the same lines, and the purpose was solely to allow employees to raise any queries they had with the general information provided by Mr W during the presentations in private.
35. In giving evidence to me, both Mr W and Mrs Green have had lapses of memory that have been pointed out and that they have accepted. That is unsurprising given the lapse of time, but it underlines the difficulty faced by Mrs Green in making her case based on recollections at such a distance. (I put it that way, because she is the person who says that she was misadvised, so the burden of evidence lies on her side of the matter).
36. Without casting any doubt on the honesty of the recollections of Mrs Green and her colleagues, their meetings with Mr W took place many years ago and, on the balance of probabilities, I cannot find that Mr W would have made recommendations to them which would not be supported by the documentation in their possession and also transgressed the brief given to him by Unipart.
37. I should point out in passing that without some quite complex calculations based on assumptions as to future investment returns and other matters, it is not possible to say whether (a) if Mrs Green *had* been advised to transfer in 2000, that such advice would have been inappropriate and (b) whether as at today it is likely that Mrs Green will be worse off when she reaches her retirement date.
38. Mrs Green's attention was drawn to the various options available to her. It was open to her to research them in more detail should she have wished to do so by seeking independent financial advice at her own costs and defer her decision to transfer until she was completely satisfied that it was the correct option for her.

39. In conclusion, I can only reach a view on the evidence. That evidence, however, falls short of establishing that injustice was caused to Mrs Green as a result of any maladministration on the part of Unipart through their appointed IFA.
40. I do not therefore uphold Mrs Green's complaint.

Tony King
Pensions Ombudsman

12 August 2014