

The complaint

Mrs G complains that Forester Life Limited (Forester) mis-advised her to transfer her occupational pension scheme (the Scheme) losing valuable guaranteed benefits and subsequently a second plan to a Stakeholder Pension Plan (SPP). She wants compensation for her losses.

Mrs G is represented by a claims management company (CMC) in bringing her complaint.

What happened

Mrs G contacted an adviser with Forester in 2009, who was a family friend. She says she initially wanted to discuss savings for her children. But following a meeting in September 2009, she was advised to also take out a Stocks and Shares ISA and the SPP. And she accepted these recommendations. The SPP was to receive monthly contributions before tax relief of £50, increasing by inflation and the plan started in October 2009.

Mrs G was 32 years old and says as her marriage was breaking up, she was vulnerable at the time. She also says she was advised to transfer her previous employers' pension scheme into the SPP and completed paperwork about this. The administrators of the Scheme then wrote to Forester in December 2009, providing a transfer value of £20,400.74, and other information. Further paperwork was sent to Mrs G by Forester which she returned and on 29 April 2010 £22,625.01 was transferred to the SPP.

Mrs G says the same adviser subsequently advised her to transfer a pension plan with Aviva worth £1,323.95 to the SPP. This was completed in September 2019, shortly after the adviser left Forester. She says following conversations with family members about pensions subsequently, she realised that these transfers might not have been in her best interests. As she now understood the Scheme transferred in 2010 to have been a final salary or defined benefit (DB) scheme, which was like *"gold dust"*. Mrs G mentioned this to her new Forester adviser, who raised a complaint on 13 October 2022.

Forester looked into the complaints about both transfers, but it didn't uphold them. It said it hadn't provided any advice to Mrs G that she should transfer. It said both transfers were arranged on an *"non-advised"* or execution only basis. And she'd signed declarations confirming this. For the first transfer, it said its administration team had written to her in December 2009 with information from the existing Scheme. And had suggested that she take advice and to make *"sure you fully understand the risk and benefits of transferring"*. It said she'd then signed further documents confirming she wanted to proceed. It said the administrators of the Scheme required her to sign documents to proceed with the transfer and had also suggested she take financial advice. Forester did offer Mrs G £50 compensation for the delay in looking into her complaint.

Mrs G referred her complaint to our service and our investigator looked into it, but he didn't uphold it.

Our investigator said having checked with the administrator of the Scheme and Forester, Mrs G hadn't in fact transferred a DB scheme but a defined contribution arrangement. But

this did contain an underpinned Guaranteed Minimum Pension (GMP) which guaranteed a certain level of pension increased to retirement age by inflation. He said the GMP was a valuable protected right, worth £1,522.22 per annum in December 2009. But he said at the time there was no requirement to take regulated financial advice before transferring this type of arrangement.

But he said apart from Mrs G's testimony, there was no evidence Forester had advised her to transfer either scheme to it. He said Foresters' advisers could only provide advice on a limited range of stakeholder products and were specifically not authorised to provide pension transfer advice. And it had confirmed its advisers were largely remunerated by salary and wouldn't be paid commission on transfer business.

Our investigator said it was likely the existing Scheme was discussed. But that there were subsequent letters and documents suggesting that Mrs G take advice before proceeding with the transfer over a period of several months. Meaning she'd had opportunities to confirm matters during this time. And Mrs G had signed documents confirming she hadn't received advice about the transfer. He said there wasn't enough evidence to say Forester had advised Mrs G to transfer to uphold the complaint. But that Forester should pay the £50 it had offered her if it hadn't done so.

Mrs G and her CMC disagreed, making many points. In summary:

- Our investigator had relied on a *"lack of evidence"* in coming to his findings
- The regular contribution plan was set up solely to facilitate the transfer
- It was inconceivable that Mrs G would transfer *"a valuable occupational pension scheme without ... being advised to ... by a professional adviser"*
- Warnings hadn't been given that the transfer was unlikely to be in Mrs G's interests, the declarations she'd signed *"were self serving"* and it was *"inconceivable that advice was not provided"*
- Forester had facilitated transfers it knew weren't in the client's interests, which it shouldn't have accepted and instead treated Mrs G as an insistent client, securing her written agreement about the reasons for proceeding
- Forester failed to carry out due diligence, to record Mrs G's objectives, financial position and future needs, or to analyse and clarify the critical yields needed to support the transfer.
- Forester had failed to treat Mrs G fairly and communicate with her clearly
- That Forester was *"negligent and/or in breach of contract in relation to their responsibilities as"* Mrs G's *"independent financial adviser"*.

As Mrs G doesn't agree it has come to me to decide.

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.

Having done so I am not upholding the complaint.

I know this will disappoint Mrs G and I'll explain why I have come to my decision. I have considered all the points made by Mrs G and her CMC but will only address what I consider to be the main issues. Principally this is whether these were non-advised transactions. If they were, then many of the points made by the CMC aren't relevant. And I disagree that there is a *"lack of evidence"*. And on balance, I think the evidence does show these were non-advised transactions.

There is no evidence apart from Mrs G's testimony that the adviser recommended the transfers. Only Mrs G and the adviser were party to their discussions. That isn't to dismiss her recollection of what was said, but the initial meeting was over 14 years ago and it's likely many issues were discussed. I think her existing Scheme was discussed at that meeting. Because the transfer application form had the same date as the application to start the SPP. And Mrs G had been sent a letter by the existing Scheme in January 2009. This gave details of her benefits, including a valuation, and these details were entered on the transfer application. But that doesn't evidence that the adviser recommended the transfer.

A common point of contention with disputed non-advised sales is that the customer feels they have been given advice to do something whereas the business thinks it has only provided information about its products.

Under a non-advised sale, a customer provides a specific instruction, and the business executes that without it giving any advice or the customer expecting it to. So, with a non-advised sale I wouldn't expect to see any evidence of any consideration of the merits of the transfer or otherwise. Because any such consideration, due diligence and so on would in fact be advice. And where a firm arranges a non-advised transaction, it isn't responsible for the outcome whether good or bad for the client.

The evidence that persuades me that this was a non-advised sale is as follows.

- Foresters' advisers could only to provide "*basic advice*", which didn't include pension transfers, on "*stakeholder*" products. That broadly meant advice on the suitability of relatively simple products through the use of scripted questions without carrying out a detailed assessment of the customer's needs. That is confirmed by the "*Recommendation Summary*" report dated 30 September 2009 sent to Mrs G.
- Following our investigators finding, the CMC argued it is "*inconceivable*" that Mrs G would have transferred a valuable occupational pension scheme without advice. But in bringing her complaint Mrs G said at the time of the transfer she didn't understand pensions or the value of what she was transferring. The certificate of benefits sent to her by the existing Scheme had noted she could transfer to another arrangement if she wished. So, she would have been aware of this option before meeting with the adviser.
- Forester says the adviser could give information about the products offered. I expect that would include confirming that it was possible to transfer other pensions to the SPP. Information also likely to be in the key features documents of the SPP. But the adviser wasn't allowed to give transfer advice and received no commission or bonus payment on incoming transfers. That was in keeping with the Regulators Conduct of Business (COBS) rules for "*basic advice*". Which required that remuneration packages shouldn't influence advisers to give unsuitable advice. Without payment there would be little incentive to advise on the transfer, which would also risk disciplinary action for doing so. This is contrary to the more common scenario where it is claimed no advice was given, but significant fees or commissions were still charged for facilitating the transaction.
- Mrs G signed, what I think were prominent, declarations in respect of both transfers confirming she hadn't been advised. For the 2010 application this was:

"I UNDERSTAND THAT I HAVE NOT BEEN PROVIDED WITH ANY ADVICE TO TRANSFER A PENSION SCHEME"

And for the 2019 application:

“I confirm that I have not been provided with any advice to transfer a pension scheme.”

In isolation such declarations might not always prove the client wasn't given advice. But in this case, I do think the subsequent documentation in respect of the 2010 transfer sent to and returned by Mrs G, does show that advice wasn't being provided. And I think she should have been reasonably aware of that. And importantly this subsequent correspondence didn't involve the adviser and was sent to her by post.

In its letter to her of 15 December 2009 the pensions administration team at Forester forwarded information received from her existing Scheme including the current transfer value. The letter included the following warning:

“Pension transfers, particularly those involving salary-related occupational pension schemes, are complicated and it is difficult to make a suitable decision without advice, even when all the relevant information is provided. You should make sure that you fully understand the risks and benefits of transferring your pension before proceeding”.

So, whilst the CMC argues no warning was given by Forester, I think it was.

The documents enclosed from the existing Scheme said:

“Important Notice for all members wishing to transfer

The trustees are not able to advise members who want to take a transfer from the scheme/plan. The trustees recommend that you take financial advice to help you consider carefully the possible merits and risks associated with taking a transfer value, compared with retaining a deferred benefit entitlement from the scheme/plan.”

It then detailed a number of aspects that should be considered. So, I think Mrs G did receive warnings about the transfer before it was actioned.

- Mrs G signed and returned Forester's form enclosed with its letter saying she wished to proceed with the transfer on 20 January 2010. But she didn't enclose the other paperwork, and this was twice sent again. With Mrs G signing it on 15 February 2010 and Forester receiving it on 2 March 2010. The transfer itself wasn't completed until 29 April 2010. That's relevant as it meant that Mrs G had several months to reflect on what was happening and to raise any queries or questions. As she was prompted to do by both Forester and her existing Scheme. Rather than the transfer just completing soon after the meeting with the adviser in September 2009, when she'd signed multiple documents for different things.
- Mrs G had received a written Recommendation Summary report recommending the SSP and the ISA investment dated 30 September 2009. But this made no reference to the pension transfer. She then received information from both Forester and the existing Scheme after the initial transfer application had been completed. This prompted her to take advice and to consider if she was doing the right thing. If she considered the adviser was recommending the transfer, I think it is reasonable that she would have queried why she hadn't received a similar report for the pension transfer. The letter of 15 December 2009 provided a contact number and asked her to get in touch if she had any queries. But there is no evidence she did.

Taken together I think this shows that Forester didn't provide advice to transfer, and it is more likely than not that any comments made by the adviser about the existing Scheme were generic. The absence of a financial incentive to encourage the transfer is a significant point. And I think Mrs G had several opportunities over several months to question the transfer, given the information she was sent. As she didn't do so I'm satisfied from the evidence available that this was a non-advised sale.

Above I have focused on the first transfer, where there is evidence of a guaranteed benefit being given up. There is very little information about the second transfer and no evidence it was advised by Forester. But the same considerations noted above apply to the second transfer.

However, due to legislative changes from 2015 it wasn't possible to transfer pensions containing guaranteed benefits without first taking financial advice. With that advice clearly demonstrating the transfer was in the best interests of the consumer. And the existing pension provider would require confirmation that advice had been given before being able to release the transfer. And as Forester doesn't give advice on pension transfers, this confirmation couldn't have been provided. So, it's unlikely any guaranteed benefits were involved here. And there is nothing to suggest this wasn't also a non-advised sale.

So, I think the evidence shows the transfers were non-advised as Forester have said they were. That means I can't uphold this complaint. Forester have offered Mrs G an ex-gratia payment of £50 for the delay in considering her complaint. If this hasn't been paid and she wishes to accept it, she should contact Forester so this can be arranged.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 16 February 2024.

Nigel Bracken
Ombudsman