

The complaint

Mr S has complained about the advice given to him by Throgmorton Financial Services Ltd ('TFS') to transfer his occupational defined benefit ('DB') pension to a personal pension held with Scottish Life.

Mr S has stated that this advice was unsuitable and has caused financial loss.

What happened

In February 2010 Mr S's DB scheme wrote to members with an offer of enhanced transfer values should they decide to transfer away from the DB scheme.

Mr S's letter confirmed his current transfer value was £61,661 and that should he decide to transfer, this amount would be increased by £9,242. Alternatively, should Mr S decide he wanted to receive the enhancement directly an amount of £7,229 (after tax and national insurance deductions) would be paid to him personally.

The letter explained that financial advisors ('Firm A') had been appointed to provide advice to scheme members on the suitability of a transfer.

Firm A were being paid for by the company scheme and as such their advice would come at no cost to Mr S.

It was explained that there was no obligation to accept the offer but that it was strongly recommended that Mr S seek advice either from Firm A or his own IFA. The letter also stated that Mr S would not be able to participate in the offer unless he had received independent financial advice.

Mr S chose to get advice from TFS, with this process commencing in March 2010. The fact-find which recorded Mr S's circumstances and objectives was completed and signed on 3 March 2010. This confirmed Mr S was aged 51, was separated, and had income of £35,000 a year.

With regard to his objectives the fact-find recorded that Mr S wanted to transfer his paid-up pension and take the cash benefit / enhancement.

The general notes section of the fact-find confirmed that Mr S "*intends to take cash (after tax and NIC) enhancement*" and confirmed Mr S had "*already decided he will accept [DB scheme] offer as per letter dated 12/2/2010 and that he will take the cash (after tax and NIC). The balance of £61,661 to be transferred . . . Did not want advice on whether he should or should not take this option . . .*"

Mr S signed the application forms for the new pension on 18 March 2010.

The advice was then documented in a suitability letter dated 22 March 2010.

This suitability letter stated that Mr S's DB scheme had written to him offering an enhanced transfer value. It was recorded that "*this offer consists of the option to enhance your existing*

fund by £9242.93 (15%) or they will give you a tax and NIC paid cash incentive of £7229.62 (11.73%). The latter is what you have already decided upon”.

The letter went on to confirm Mr S had been assessed as a balanced risk investor and recommended the transferred funds be placed into a Scottish Life personal pension. The transfer proceeds were to be split between ten separate investment funds chosen by TFS to match the Balanced risk profile.

In July 2010 Mr S consolidated two defined contribution ('DC') pensions into the Scottish Life pension which had received the DB scheme proceeds. Pensions with values of around £2,000 and £6,700 held with Aon and L&G were transferred on an execution only basis. These transferred funds were to be split between the same ten funds recommended in March 2010.

Mr S, through his representative, registered a complaint with TFS in June 2023, stating that the advice was considered unsuitable and had caused financial loss.

In response TFS stated that they did not consider themselves responsible for the advice given to Mr S. The adviser who gave the advice had indeed been a self-employed representative of TFS at the time, however had subsequently gone on to set up his own business and under the terms of his contract had taken all his clients (including Mr S) with him. TFS explained that under the terms of the novation agreement between Mr S's adviser and TFS, all rights and responsibilities for the transferred clients (including previous advice received) was transferred to this new business.

Unhappy with the TFS complaint response Mr S referred his complaint to this service in August 2023.

Our investigator looked into things and firstly considered whether the complaint was one which TFS were responsible for.

Having considered the point of advice documentation and the fact that TFS could not produce a copy of the novation agreement, our investigator concluded that the complaint was one which TFS should answer. Additionally, given the date of advice the investigator considered the timeliness of the complaint and concluded that it had been brought in time.

Whilst TFS did not agree with the outcome reached and re-iterated their opinion that the complaint was not theirs to answer, they did consent to the merits of the complaint being considered.

With regard to the advice itself, the investigator explained that the process followed by the adviser in 2010 was incorrect, with insufficient information gathered at that time to provide full advice about the suitability of a transfer. However, overall, the investigator concluded that even if TFS had told Mr S to retain the DB scheme he would have rejected this advice and transferred anyway. As such the complaint was not upheld.

Mr S did not agree, stating that it was TFS's responsibility to follow the correct processes, provide suitable advice and that if he had been advised to retain the DB scheme he would have done so.

As no agreement could be reached the case has been passed 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.

In line with the process followed by our investigator, I have firstly considered whether this complaint should have been registered against another party or whether the responsibility for the advice remains with TFS.

The advice documentation all confirms that the advice was provided by TFS. The application form confirms that the advice businesses responsible for the advice was TFS and documentation from the pension provider confirms the initial advice fee was paid to TFS.

Whilst I appreciate TFS believe responsibility for this historic advice was transferred to another business subsequently set up by Mr S's adviser, their inability to produce a copy of such an important document means I cannot disagree with the outcome reached by our investigator and have concluded that this complaint is one which TFS are responsible for.

I have additionally considered the timeliness of the complaint and have again reached the same conclusion as our investigator. I can find nothing in the documentation provided by either party that would suggest Mr S would (or should) have been aware he had cause for complaint sooner than he actually did. Further, TFS has in any case consented to our service considering the complaint.

Given these two conclusions, I have gone on to consider the merits of the complaint.

It is clear that the advice process followed by Mr S's adviser was incorrect.

A subsequent internal compliance check completed by TFS themselves concluded that their advice process had not been followed and that insufficient information had been gathered for full DB transfer advice.

No transfer value analysis was completed and as such the value of the benefits being given up by Mr S was not established before the transfer was recommended.

It is impossible for me to assess whether the transfer of the DB scheme was suitable or not - there is not enough information on file for such an assessment to be made.

However, there was significant guidance available for firms looking to give DB transfer advice in 2010. As part of this the Financial Conduct Authority had been clear that it was likely that in most cases a transfer away from a DB scheme, and the loss of valuable lifelong guaranteed benefits, would be unsuitable for most customers.

As such, given the lack of information available, I consider it most likely that had full (suitable) advice been given to Mr S in 2010, that advice should have been to retain the DB scheme.

However, in line with the review process carried out by our investigator, before I can go on to hold TFS responsible for any losses Mr S may have suffered because of the transfer, I must also consider whether Mr S would have accepted any alternative advice to retain the DB scheme had TFS provided it.

Here, I have reached the same conclusion as our investigator and for broadly the same reasons.

Pension regulation at the time did not require Mr S to seek financial advice to transfer his DB scheme, he had the right to simply request a transfer from the scheme trustees.

However, to access the enhancement being offered, the scheme had imposed a requirement for Mr S to seek advice, as such, Mr S had no option but to receive advice if he wanted the enhancement.

The scheme provided access to an advice service that would have come at no cost to Mr S - provided by Firm A. The offer letter explained that whilst Firm A were being paid for by the company, their role was to act solely in Mr S's best interests. Mr S also retained the right to seek advice from his own adviser should he wish, although this would be at his own expense.

Also, there was no requirement for the advice provided to support the transfer for Mr S to transfer and access the enhancement. Mr S had the right to reject any advice given, and transfer regardless.

Our investigator concluded that this is what Mr S would have done and, as above, I agree with this conclusion.

I would say that this is an unusual, and in some ways quite finely balanced, case and I have considered the chain of events which transpired carefully. But there are some significant aspects which lead me to conclude, on balance, that Mr S would have transferred, even if the full advice process had been followed.

The content of the advice documentation clearly states, in more than one place, that Mr S had already decided about the transfer and did not want advice on which of the enhancement options he was going to take.

Additionally, Mr S chose not to use the advisers provided by the pension scheme (Firm A) and sourced his own advisers. I consider this to be an indication that Mr S was willing to take charge of the process and wanted to progress the advice process.

Other than it being Mr S's right to do so, no rationale has been given for Mr S's decision to source his own financial adviser at his own cost, rather than use the free, independent financial advice which had been arranged by the scheme trustees.

This is an unusual step. If Mr S was seeking an impartial review of his options, then in my view the free, comprehensive review would have been the logical route. The fact that Mr S sourced his own adviser and paid for advice which did not assess the merits of a transfer, and instead limited the advice to the suitability of the Scottish Life pension, whilst recording that he had made up his mind and didn't want the usual review of his options, might reasonably suggest that he was seeking to fast track the process of a transfer, without the usual consideration of his circumstances, objectives and options.

There is an obvious counterpoint here, which I've considered carefully – it might quite reasonably be argued that in circumstances such as these, where an individual is in an uninformed position, they couldn't reasonably be categorised as an insistent client – as they don't have all the relevant information to hand, e.g. critical yields, value of guaranteed benefits etc.

But, in this case, the particular circumstances (such as opting to not accept the offer of the free, comprehensive review) strongly indicate in my view, on balance, that Mr S had made up his mind about the transfer and that, even armed with full knowledge and advice regarding a transfer of his DB scheme, the ultimate outcome would more likely than not have remained the same – he specifically opted against the free, full advice process and was therefore going to transfer regardless and access the cash incentive.

Finally, I note that Mr S moved two further pensions without advice, on an insistent client basis only months after the transfer of his DB scheme. I think this further demonstrates that Mr S was prepared to make decisions on his finances without advice to achieve what he wanted.

Overall, I have concluded that Mr S would have rejected advice to retain the DB scheme (had TFS given it) and transferred anyway to access the enhancement being offered.

In response to the investigator's findings Mr S stated that it was TFS's responsibility to follow the correct processes and to provide suitable advice regarding the transfer of the DB scheme, and I agree with this statement. It is also clear that TFS failed in respect of both these points.

However, for the reasons set out above, I have concluded that a different advice process being followed by TFS in 2010 would not have altered Mr S's pre-determined desire to transfer the DB scheme and access the enhancement on offer.

Whilst the complaint registered by Mr S centred around the transfer of the DB scheme rather than the suitability of the Scottish Life pension, I have gone on to consider this aspect of the advice provided by TFS.

Mr S was around 14 years away from his desired retirement age and did have some knowledge of investments having held two DC schemes over a number of years.

Given this I do not believe the assessment of Mr S as a Balanced risk investor to be unreasonable.

Having looked at the investment funds recommended, these exposed Mr S to a range of asset classes with the overall portfolio broadly having a 60% exposure to equities, 15% exposure to property, and 25% exposed to cash and corporate / government bonds. I would not consider this to be inconsistent with a balanced risk approach.

I have also considered the fact that a personal pension rather than a stakeholder pension was recommended. Stakeholder pensions had charges which were capped (at 1.5% per year for the first ten years) and had to allow flexibility regarding contribution size and regularity which were designed to encourage people to save for retirement. These capped charges and flexibilities meant Stakeholder pensions should have been considered the first option for individual pension products.

In this case TFS recommended a personal pension rather than a stakeholder pension on the basis that there was a wider fund choice, and the charges were broadly comparable.

The product illustration on file confirms that the overall annual cost of the Scottish Life pension was 1.53% a year and overall, I do not consider this to be materially different from the capped charges applicable to an alternative stakeholder pension.

Given this, I do not believe the recommended Scottish Life pension, or the underlying investments held within it, were unsuitable for Mr S.

As such, in line with the outcome communicated by our investigator, I am not upholding this complaint and require no further action from Throgmorton Financial Services Ltd.

My final decision

In line with the commentary above I am not upholding this complaint against Throgmorton

Financial Services Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 15 July 2024.

John Rogowski
Ombudsman