

## **The complaint**

Mrs I complains about the suitability of the advice she received from Throgmorton Financial Services Ltd (TFS) to transfer two defined-benefit occupational pension schemes (OPS) she held with former employers to a Personal Pension (PP).

Mrs I is being represented by a third party, but for ease I'll refer to all representations as being made by her.

## **What happened**

In 2016, Mrs I was introduced to TFS by a business I'll refer to as 'Firm B' to discuss her OPS pensions. At the time it was noted that while she could take benefits from one of her OPS' at 55, she wanted to leave these in place as she wasn't intending to retire until at least 60 having started a new job. But in September 2016, Mrs I again approached TFS for advice as she was being made redundant and the following month it recommended she transfer her OPS' into a new PP.

At the time of the transfer it was noted that Mrs I was aged 56. She had bank deposits and savings of around £15,000 and owned her home, which had an outstanding mortgage of £62,000. Mrs I had two preserved final salary pensions that were projected to pay a pension of £7,433.06 from age 55 and £2,204.20 from age 65. Prior to the transfer each pension respectively had a transfer value of £195,140.94 and £32,000.08. And Mrs I's desired retirement age was noted as 55. She also had a small pension she was contributing to through her current employer. And it referred to information on Mrs I's income and expenditure as being in the fact find completed by Firm B.

TFS carried out a risk-profiling exercise and after discussing this with Mrs I it determined she had a 'cautious to balanced' attitude to risk. The fact find and suitability report said she expected to be made redundant, so her income would be nil. It said that her objective was to take benefits from her pension, as she planned to retire shortly, and that she wanted to reduce her expenses by repaying her mortgage. It also said she wanted flexibility to vary the income she takes and to potentially reduce this when she receives her state pension at 67.

TFS recommended in the suitability report that Mrs I transfer to a PP and invest in the Profund Growth Fund. And Mrs I's OPS benefits with an updated total transfer value of £227,141 were transferred to the PP in late 2016 and early 2017 respectively.

In 2020, with the assistance of a representative, Mrs I complained to TFS about the advice she received to transfer her OPS benefits, saying that there was no reason for her to do so and that it caused her financial loss. She said she was told this would produce growth between 7 to 12% per year and she wasn't told where her funds would be invested. And that a TVAS wasn't discussed or provided in writing. Mrs I said she was a low to medium risk investor and that her answers on the attitude to risk questionnaire were contradictory.

In January 2021 TFS responded saying that it made Mrs I aware of the transfer risks and clearly set out the receiving scheme and fund in the suitability report. It said it confirmed in this that Mrs I had been given a copy of the TVAS, the details of which were also

summarised in the report. And that the transfer was justified as her main objective was to retire at 55 and pay off her mortgage using tax free cash (TFC), but her existing OPS benefits wouldn't cover her outgoings. It added that the cautious to balanced attitude to risk it agreed with Mrs I is in line with what she's said about being a low to medium risk investor.

Unhappy with this, Mrs I came to our service adding, in summary, that she was led to believe she couldn't withdraw funds from her pension unless she transferred. She told us she doesn't know how she would have managed her outgoings if she hadn't transferred. She said she had no other available funds and was unable to return to work, as she was suffering from severe anxiety and depression due to injuries caused by an accident.

One of our investigators looked into her complaint. He said he would have expected TFS to have explored what OPS benefits were available to Mrs T before making a transfer recommendation. And that without this she was unable to make an informed decision. But, given her objectives in light of her ill health and circumstances at the time, it's likely she would have transferred in any case given what her OPS benefits would likely have been.

Mrs I didn't agree. She said that it isn't fair to say that if TFS had given correct advice she would still have gone ahead with the transfer, as she wasn't given the opportunity to fully review her potential retirement position. And that she didn't fully understand the implications of what she was doing. Mrs I said the main reason for leaving work at the time was because she was relatively new in the company and knew there would be the TFC available for her to live on if she left the job – she was enticed by the idea of this. And that she would have almost certainly gone back to work after recovering from her injury and not proceeded with the transfer.

As no agreement could be reached, the complaint's been passed to me for a decision. I asked Mrs I for more information about, for example, what her plans were in relation to working at the time of the advice and to expand on her ill health and how it impacted on her and her ability to work, both at the time and on a longer term basis.

In summary, she said she wasn't sure whether she'd be able to work again, even in another role, due to the nature of her ill health and being unable to drive, which her job required. She said her anxiety and depression was intensified by her other health conditions and meant she was often unable to leave the house. She also said that a few years after the advice some of her ill health was explained by an Osteoporosis diagnosis and that she had a nervous breakdown.

### **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.

When considering what's fair and reasonable, I am required to take into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Having done so, while I appreciate Mrs I will be disappointed, I'm not asking TFS to do anything for largely the same reasons as the investigator. I'll explain why.

The regulator, the Financial Conduct Authority ('FCA'), states in its Conduct of Business Sourcebook ('COBS') that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, TFS should have only considered a transfer if it could clearly demonstrate that the transfer was in Mrs I's best interests (COBS 19.1.6).

TFS appears to accept that the transfer would leave Mrs I worse off in retirement because she wasn't likely to be able to match or improve on the OPS benefits if she transferred out. I say this because the suitability report explains that for Mrs I's main OPS, that she could retire from at 55, the critical yield required to match the benefits she was giving up was above 50% due to the proximity of her retirement age. And for her smaller OPS it said the critical yield of 8.96% is higher than the 6.2% expected growth rate on the fund it was recommending. It went on to say it had made Mrs I aware the critical yield may not be achieved and that she could receive a lower income in retirement. And then it explained it had recommended she proceed with the transfer so she could take benefits to repay her mortgage and retire early. It's also since recognised that Mrs I taking the level of income she said she needed following the transfer wouldn't be sustainable throughout her lifetime based on her average life expectancy, but I can't see that it discussed this with her at the time.

Mrs I says she was advised she'd achieve a significantly higher growth rate in her new fund following the transfer. But I think this is unlikely given what I've explained about what I can see she was told in writing about this.

Financial viability isn't the only consideration when giving transfer advice though; other considerations might mean a transfer is suitable. So I've thought about whether there any which meant the transfer in Mrs I's case was suitable, despite providing overall lower benefits.

The documentation I've seen from the time shows that Mrs I wanted to retire at 55, which meant she wouldn't have any income to meet her outgoings, totalling £15,600 per year without including her monthly mortgage payments. So she wanted flexibility in retirement to take a higher income to meet these needs and a lump sum of £62,000 to repay her remaining mortgage to reduce her monthly expenditure.

Aside from the monthly cost there's nothing to suggest Mrs I urgently needed to repay her mortgage though. And I can't see that TFS explored alternatives with Mrs I, such as using her savings to meet her expenses. Or that it confirmed to Mrs I whether TFC would have been available to her at 55 under her OPS pensions and how this would have impacted on the income she could achieve, to see if she could meet her objectives by taking these benefits instead.

While I would have expected TFS to do this to meet its responsibilities under COBS, it's since provided information showing what Mrs I would likely have achieved if she had taken her OPS benefits at 55, assuming she could retire early from the smaller scheme. This shows she would likely have been entitled to TFC totalling just under £57,000 and a reduced annual income of £5,973. And, taking everything into account, I don't think Mrs I's objectives could have been achieved by living off her savings and/or taking her OPS benefits instead.

Mrs I's savings would have only allowed her to meet her expenses for around eight months and wouldn't have bridged the gap in income until her state pension became payable given this wasn't for another 12 years. Her starting annual OPS benefits wouldn't have been enough to meet her monthly outgoings, even when supplementing this with her savings. And even if she'd used the TFC to give herself an income alongside this, rather than repaying her mortgage, I still don't think this would have been enough to meet her outgoings.

I've taken into account that the notes TFS made when Mrs I approached it for advice in September 2016 suggest she hadn't ruled out the possibility of returning to work at some stage given she said she didn't feel she could move to a new job at that point. And that she wanted flexibility in retirement to reduce or stop taking an income when she reaches state pension age or if she does obtain another job in the future. And I appreciate Mrs I's since

said that if she'd known the importance of the benefits she was giving up she would have gone back to work.

But I have to consider what I think is likely to have happened at the time. And Mrs I's also told us she doesn't know how she would have managed her outgoings if she hadn't transferred. She said she had no other available income and was unable to return to work due to her severe ill health. And she's explained that as a result she wasn't sure whether she'd be able to work again, even in another role. It seems to me that her ill health continued to intensify after being given the advice. And that she hasn't been able to work in any way since then.

So, taking everything into account, I think it's likely that at the time of the advice Mrs I didn't feel able to return to work and that she had no other way to meet her outgoings. And even if she hadn't yet completely ruled out that possibility and might have considered using her savings in the short term in that case to tide her over rather than transferring, I think it's likely she would have looked to transfer soon after in any event in light of her expenses and given her ongoing ill health stopping her working.

This means I think Mrs I had a strong need for TFC and a variable income which could only be achieved by her transferring her OPS benefits, before reducing it once her state pension became payable. And for this reason, overall, I don't think the advice TFS gave was unsuitable. This means I'm not asking it to do anything in settlement of this complaint.

### **My final decision**

For the reasons I've given, my final decision is that I'm not asking Throgmorton Financial Services Ltd to do anything.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs I to accept or reject my decision before 24 August 2022.

Holly Jackson  
**Ombudsman**