

The complaint

Mr G complained that Towergate Financial (Scotland) Limited ('Towergate') advised him to transfer the benefits from his occupational pension and use the value to buy an annuity from another pension provider.

At the time of the events complained about the firm which advised Mr G was trading under a different name. But Towergate told us that it is responsible for replying to the complaint. So I will only refer to Towergate within this decision.

Professional representatives have helped Mr G to bring this complaint. But, for ease of reading, I will refer to the representatives' comments and actions as being Mr G's.

Provisional decision

On 17 January 2024 I used a provisional decision. For ease of reference I've copied the relevant extracts below. I said:

'What happened

Mr G was a member of his former employer's occupational pension scheme. His normal retirement date for that pension, when he could take a pension without actuarial adjustment, was in 2015 at age 62.

Mr G was employed. Together with his wife he also had a financial interest in a business. He said that it was in connection with that business' insurance that, in 2009, he spoke with Towergate. At that time Mr G was 56 years old. He and his wife had no significant savings or debts.

Towergate advised Mr G to use the value of his occupational pension scheme to buy an annuity from a named pension provider. Mr G acted on Towergate's advice and bought the annuity. That paid him a tax free cash lump sum of £9,923 together with an index linked yearly annuity income of £1,291.

In 2021 Mr G contacted representatives as he was concerned he might not have received suitable advice.

In 2022 Mr G submitted a complaint to Towergate that its advice wasn't suitable for him. Towergate replied. Amongst other things it said it believed Mr G had brought his complaint too late.

Mr G asked the Financial Ombudsman Service to consider his complaint. One of our Investigator's looked into it. She thought Mr G had brought his complaint in time. So she said we had jurisdiction to consider it. She also assessed the merits of the complaint and recommended it be upheld. She said Towergate should calculate if Mr G had suffered a financial loss as a result of the transfer and if so compensate Mr G accordingly. That compensation included refunding any fees Mr G paid for the advice and adding interest to that sum.

Towergate didn't agree with our Investigator's complaint assessment. It continued to argue that Mr G had brought his complaint outside of the appropriate timescales for doing so. I issued a decision explaining why I'm satisfied that the complaint was in time and that we had the powers to consider. And I invited any further comment the parties wished to make.

Towergate repeated that it believed Mr G's complaint was out of time. But we confirmed that I had already decided that issue. It is one we can consider. And as Towergate hasn't accepted our Investigators assessment of the merits of the complaint the matter's been passed to me to issue a final determination.

What I've provisionally 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.

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

What sort of occupational pension did Mr G transfer out of?

Before commenting on Towergate's advice I thought it would be helpful to set out the type of pension Mr G gave up by transferring as the matter was disputed.

In his complaint Mr G has referred to his occupational pension as being a defined benefit (DB) scheme. A DB scheme – also known as a final salary scheme – is a type of pension where a member's benefit entitlement is usually calculated by reference to a number of years they've been in the scheme and their salary. A member's pension entitlement in a DB scheme is guaranteed and the costs must be covered by the scheme's sponsoring employer. But I don't think Mr G's scheme was a DB scheme.

Another common form of occupational pensions scheme is what's known as a defined contribution (DC) scheme. A DC scheme is often referred to as a money purchase scheme. In a DC scheme the employer's and employee's pension contributions are invested. The benefits that the employee gets at retirement are then generally dependent on the sums paid in and the returns on the sums invested.

In this instance I'm satisfied that Mr G was a member of a DC scheme and not a DB scheme. That's because the information I have about his scheme membership shows that the scheme had two distinct sections:

- *A money purchase tier ('MPT'); and*
- *A final pay tier ('FPT').*

The limited information available for Mr G's pension shows that the value of his MPT benefits in 2009 was £18,875. Whereas the value of his FPT benefits was £0.00. In other words Mr G didn't have any entitlement under the FPT section of the pension. In other words, this was a DC – or money purchase – pension. And Mr G had no entitlement under the FPT section.

I've noted that, in a letter dated 1 July 2022, the administrators of Mr G's occupational pension did set out his entitlement under the "Defined Benefit Section" of his pension.

However, the benefits the letter then refers to related solely to Mr G's entitlement to a Guaranteed Minimum Pension (GMP).

It might help if I explain that GMP is a pension entitlement for people who were contracted out of the additional state pension (sometimes referred to as SERPS or S2P) between 1978 and 1997. However, it was possible to be contracted out of SERPS/S2P from both DC and DB pensions. And the members who did so would have a GMP entitlement. And the pension information on file confirms that both MPT and FPT sections were contracted out. So, when the pension administrators referred to Mr G's 'defined benefit entitlement' in their letter of 1 July 2022 I'm satisfied they were referring to Mr G's GMP entitlement because he was contracted out of SERPS/S2P. However, in a similar manner to a DB scheme's benefits, GMP benefits are protected. So, if Mr G had remained in his occupational pension scheme, he would have been guaranteed to receive the GMP entitlement he had accrued while a member of the scheme, which would have been payable from when he turned 65.

Was Towergate's advice suitable for Mr G?

Towergate has acknowledged that it advised Mr G to transfer the benefits from his occupational pension and buy an annuity. But it has been unable to provide paperwork to support its recommendation. In fact, it's anything but certain if Towergate ever provided Mr G with its analysis and recommendations in writing. However, there is clear evidence that it did advise Mr G to make the transfer as the annuity application confirms that Towergate gave Mr G advice to apply for it.

Mr G's recollection is that Towergate contacted him concerning insurance for the business that he and his wife ran. And it was following discussions about that that Towergate then recommended Mr G should transfer his pension. Given the lack of paperwork from the time, and the fact this happened over 14 years ago, it's unclear why Towergate made that recommendation. There is a suggestion that the recommendation was to enable Mr G to free up funds to invest in his business. But Mr G's said he had no need to find funds to invest in his business at that time. However, he accepted Towergate's advice because he thought that was in his best interests.

Further, Mr G's told us that in 2009 he was employed and had no need for the additional income the annuity provided. But in transferring his pension and buying the annuity, he was essentially taking his pension earlier than he needed to, and this would've been subject to income tax at his marginal rate.

At the time of transfer in 2009 Mr G would have had entitlement to a GMP of around £3,250 a year, payable when he became 65. And that sum would have continued to increase with indexation in the meantime until he took it at age 65. And while Mr G's annuity is also index linked it seems likely that the annuity he will receive into his retirement years will be less than the sums he could have taken from his occupational pension had he remained in it. Not only would it have continued to grow, he wouldn't have been depleting the funds in the meantime. In those circumstances I don't think that transferring out of his occupational pension and buying an annuity was in his best interests.

In the absence of any other evidence to support why Mr G purchasing an annuity, as opposed to leaving his pension unclaimed and taking his GMP entitlement at age 65, was in his best interests, I'm not persuaded the advice he received was suitable. So I've set out below what Towergate should do to put things right.

Putting things right

A fair and reasonable outcome would be for Towergate to put Mr G, as far as possible, into the position he would now be in but for the unsuitable advice. Mr G has told us that he had no need to take an annuity at age 56. And, it's notable that – at the time he complained to Towergate in 2021 he was still employed, when he was age 68. So he had no need to claim his pension any earlier than age 65 when he would have gained entitlement to his GMP. So I consider Mr G would have most likely remained in the occupational pension scheme if suitable advice had been given and claimed his GMP at age 65.

*Although Mr G's pension scheme was not a DB scheme as I've said above, the GMP element of it was guaranteed. So, in order to establish if Mr G has suffered a loss, Towergate must therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in the Financial Conduct Authority's ('FCA') policy statement PS22/13 and set out in the regulator's handbook in DISP App 4:
<https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter>.*

Mr G would have become entitled to claim his full GMP entitlement from age 65. So compensation should be based on his taking GMP entitlement from that age. This calculation should be carried out using the most recent financial assumptions in line with DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr G's acceptance of my decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, Towergate should calculate and offer Mr G redress as a cash lump sum payment.

Redress paid to Mr G as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, Towergate may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr G's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.'

Developments

Both Mr G and Towergate accepted my provisional 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.

Neither Mr G nor Towergate have raised any points that call my provisional decision into question. So I see no reason to change it.

My final decision

For the reasons given above I uphold this complaint. I require Towergate Financial (Scotland) Limited to take the actions set out under the heading 'putting things right' above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 22 February 2024.

Joe Scott
Ombudsman