

The complaint

Miss G complains about the transfer she made from a former employer's defined benefit (DB) pension scheme to a personal pension. She doesn't consider that M2 Financial Ltd, now Towergate Financial (East) Limited (Towergate), acted as it should've and she says she's suffered financial loss in consequence.

For ease of reading, I've just referred to Towergate, references to which should be taken as including M2 Financial Ltd where the context so requires.

What happened

The advice and the transfer took place in 2008. Miss G had deferred benefits in a former employer's DB scheme. The DB scheme was offering an enhanced transfer value if Miss G transferred. It could either be paid into the new pension arrangement or taken as a cash lump sum, less tax.

Miss G had a telephone meeting with Towergate's adviser on 24 July 2008. During the meeting a fact find was completed. The notes mention an additional payment of £13,567 gross and that Miss G was thinking of taking the cash to assist in the purchase of a property alongside money she had in the bank. An assessment of her attitude to risk was undertaken which was deemed to be cautious.

Towergate issued a suitability report dated 28 July 2008. The covering letter said Towergate recommended that Miss G didn't transfer. A declaration was enclosed for her to sign to confirm she agreed with the recommendation and she wished to remain in the DB scheme. But the letter went on to say what she needed to do if she decided to exercise her right as an insistent client (as explained in the report) to transfer against Towergate's advice.

The report recorded, about Miss G's circumstances, that she was living with her partner and had one financially dependent child. She had no surplus income but approximately £43,000 in savings. She wanted to retire at 65 with income of £9,000 pa (which, revalued to retirement age would be £15,881 pa). A cash equivalent transfer value (CETV) of £14,529 would be paid by the DB scheme but an additional payment of £13,567 was also being offered if Miss G transferred. I understand that the DB scheme represented her entire pension provision. Her state pension entitlement was unclear.

Towergate recommended that Miss G didn't transfer because the CETV offered, with the additional payment, was unlikely to produce higher retirement benefits and likely involved greater risk. A critical yield of 7.1% was required to match the benefits being given up in the DB scheme. That was out of line with Miss G's attitude to risk. And she'd said that the security of her pension fund – which, with a DB scheme, was generally superior to a personal pension – was a high priority.

However, the report went on to say that Miss G did have the option to transfer. That was *'firmly against'* Towergate's advice but she had the right to transfer as an insistent client. If she wanted to do that she should contact the adviser. A signed and dated letter would be required, explaining why she'd chosen to pursue that option and confirming it was against

Towergate's advice. And she'd need to sign the declaration which was included as part of the report. Towergate would then offer a second meeting to explain in more detail the rationale for not transferring before acting on her instructions. A second suitability letter would also be issued.

There were declarations for Miss G to sign, confirming she'd received, read and understood the report, including the risks associated with transferring out of a final salary (DB) pension scheme and that she realised she could be giving up reasonably secure benefits if she transferred.

Towergate wrote to Miss G on 18 August 2008 referring to the suitability report she'd been sent. Towergate said '*this exercise*' will shortly be wound up, following instructions from the DB scheme employer. If Towergate didn't hear from Miss G within 14 days they'd close their file on the assumption she agreed with their recommendation to stay in the DB scheme.

Miss G emailed the adviser on 27 August 2008 saying, after much thought, she'd chosen to take the cash payment even though it was against Towergate's advice.

Towergate sent Miss G a further suitability report on 3 September 2008. The covering letter said, in bold, that it confirmed that Towergate recommended that Miss G shouldn't transfer out of the DB scheme. If she agreed, she should confirm that by signing and returning the attached declaration. But, if she wanted to exercise her right as an insistent client to transfer against Towergate's advice, she should send a letter including a statement confirming she understood she'd be transferring against Towergate's advice and saying how she'd like to take the additional sum offered, as a cash sum or as an addition to her pension fund.

The report said the purpose was to provide further advice on Miss G's options in respect of her DB scheme. It recorded, more than once, that Towergate had recommended that she didn't transfer. But she'd informed Towergate that she wished to effect a transfer on an insistent client basis and she'd confirmed that in her email dated 27 August 2008. Towergate said transferring to a personal pension with a named provider was a suitable alternative considering Miss G was an insistent client. Towergate was therefore recommending that she transfer out of the DB scheme into a personal pension with a named provider. Towergate also recommended a cautious lifestyle fund to match Miss G's cautious attitude to risk.

A number of risk warnings were given. There was a declaration for Miss G to sign (which she did on 16 September 2008). She confirmed, amongst other things, that she'd received, read and understood the report, she realised she was giving up secure benefits by transferring out of the DB scheme and she understood the impact of doing so on her retirement income needs and objectives. She also acknowledged that Towergate had advised her not to opt for the cash payment.

Miss G, through her representative, contacted Towergate in August 2024 expressing dissatisfaction with the advice she'd been given in 2008. I understand that Towergate was also instructed by the regulator, the Financial Conduct Authority (FCA), to undertake a section 166 review of enhanced transfers from the DB scheme.

Towergate wrote to Miss G on 1 October 2024. Towergate's initial observations were that there were some shortcomings with the advice given. Towergate asked Miss G for some further information by way of a questionnaire. On 24 December 2024 Towergate wrote to Miss G (via her representative) again, having completed its review. Towergate said it had assessed the complaint in line with the guidance relating to the section 166 wider review instructed by the regulator. Towergate didn't uphold the complaint. It said it had correctly advised Miss G to remain in the DB scheme. She'd gone against that advice and decided to transfer on an insistent client basis. Towergate said there were some instances where the

advice process could've been improved upon. But those points hadn't negatively impacted on Miss G's decision. The suitability report dated 28 July 2008 had explicitly stated that Towergate recommended that Miss G didn't transfer for the reasons set out.

Towergate also referred to what Miss G had said on the questionnaire about what had made her decide to transfer against advice and why that had been important to her. She'd said the amount of money at the time would've been very helpful as she'd recently been made redundant and she and her partner were in the process of buying their family home. As to what she'd used the £13,567 payment for, she'd said that they'd owed money on credit cards and the rest went towards mortgage payments. Towergate's view was that, although some aspects of the advice could've been improved on, Miss G would've still transferred anyway.

Miss G's complaint was referred to this service and considered by one of our investigators.

In her view issued on 31 March 2025 she first explained that she'd asked Miss G why she hadn't complained earlier. Miss G had said that she'd bumped into a former work colleague who'd also transferred out of the DB scheme and who'd used the same representative to make a successful claim. That had led Miss G to look at her pension statements more closely and she then began to question whether transferring had been in her best interest and she'd got in contact with the representative.

The investigator went on to consider the merits of the complaint. She agreed there were some flaws in Towergate's advice. And providing details of the insistent client process within the advice to remain in the DB scheme was confusing. But she agreed with Towergate that Miss G would've still likely completed the transfer in any event. On that basis she didn't uphold the complaint.

Miss G's representative didn't agree and asked for the matter to be referred to an ombudsman. Miss G's representative said Towergate was aware that Miss G was thinking about taking the cash to assist with the purchase of a property and using her savings. But that wasn't addressed in the suitability report and no consideration was given to the financial benefit of having (presumably) a very slightly reduced mortgage or alternative funding methods.

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'm not upholding the complaint for largely the same reasons as the investigator gave. In summary, although I think there were shortcomings on Towergate's part, I think Miss G would've gone ahead anyway and even if Towergate's advice process had been flawless.

Although I've read and considered everything, I'm only going to mention what I see as the central issues and on which my decision turns.

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').

The below is not a comprehensive list of the rules and regulations which applied at the time

of the advice, but provides useful context for my assessment whether Towergate did anything wrong.

PRIN 6: A firm must pay due regard to the interests of its customers and treat them fairly.

PRIN 7: A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

COBS 2.1.1R: A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability. And the provisions in COBS 19 which specifically relate to a DB pension transfer. At the time COBS 19.1.6G said:

'When advising a retail client who is, or is eligible to be, a member of a defined benefits occupational pension scheme whether to transfer or opt-out, a firm should start by assuming that a transfer or opt-out will not be suitable. A firm should only then consider a transfer or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer or opt-out is in the client's best interests.'

Was transferring in Miss G's best interest?

So, as per COBS 19.1.6G, the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Towergate should've only considered recommending a transfer if it could clearly demonstrate, on contemporary evidence, that it was in Miss G's best interest.

Towergate accepts there were some shortcomings in its advice. For example, the normal retirement age under the DB scheme was 65. However, Miss G was entitled to unreduced benefits from age 60. The suitability report didn't make it clear that she'd have received a greater amount of pension payments over her lifetime by taking her pension at age 60. It would've been more appropriate to compare the benefits from the DB scheme with what would've been available from a personal pension at age 60, not 65. And, because Miss G had taken the enhancement as a cash payment, the critical yield was 10.1%, not 7.10%. The suitability report hadn't given the higher figure.

I don't think the transfer was financially viable. The critical yield – the investment growth the pension fund would need to achieve, year on year, in order to provide the same benefits as those Miss G had given up in the DB scheme, was 7.10% (or 10.1% taking into account that the additional payment wasn't going to be paid into her pension). I think Towergate correctly concluded that she was likely to receive benefits of a substantially lower overall value than the DB scheme at retirement as a result of investing in line with her (cautious) attitude to risk. So, for that reason, a transfer out of the DB scheme wasn't in Miss G's best interests.

However, financial viability isn't the only consideration when giving transfer advice. I'd normally also look at other considerations and which might mean the transfer was suitable, despite providing overall lower benefits. But I don't think that's necessary here because Towergate concluded that transferring wasn't in Miss G's best interests.

But Towergate, having said Miss G shouldn't transfer, then went on to process the transfer, having made further recommendations in connection with the transfer and on the basis that Miss G was an insistent client. I've therefore gone on to consider that aspect of the matter.

Towergate's insistent client process

Since 2018, COBS 9.5A includes additional guidance on insistent clients. But, at the time of the transfer, COBS didn't contain specific requirements for insistent clients. Nor was there any definition of 'insistent client' in the regulator's handbook. But it was generally understood to describe a customer who wanted to proceed with a transaction against the advice they'd been given.

There'd previously been rules in place relating to insistent clients when the Personal Investment Authority (PIA) was the regulator and the PIA Adopted Rules applied. The Conduct of Business provisions had also contained rules about how businesses should treat insistent clients. These requirements weren't replicated in the COBS rules, which came into force in 2007. But at the time the advice was given I think it was good industry practice for firms to ensure that customers who wanted to go ahead with a transaction against an advisor's recommendation to make sure it was clearly documented that the consumer was acting against the recommendation and that they wanted to proceed in any event.

Furthermore, COBS required Towergate to act honestly, fairly and professionally in accordance with the best interests of its client and to provide information that was clear, fair and not misleading. So, Towergate's recommendation had to be clear and Miss G needed to have understood the consequences of going against the recommendation. PRIN was also in place and PRIN 6 and PRIN 7 are relevant too.

Towergate's suitability reports set out that its recommendation was that Miss G shouldn't transfer. And the covering letters to the reports also said that. But Towergate's advice was, more than once, prefaced by saying that if Miss G was in any doubt about whether she should transfer, then Towergate would recommend that she didn't do so. If Towergate's strong recommendation was that Miss G shouldn't transfer, Towergate should've left things there. In my view, referring to the possibility that she might be in doubt, introduced confusion and undermined the advice not to transfer.

And, although the recommendation in the original report was not to transfer, Towergate immediately followed that by saying Miss G could still transfer if she wanted to and setting out what she needed to do. I think that would've undermined the recommendation not to transfer. It would've made it seem that proceeding against the advice given was routine. And suggested the advice was more of a formality, so underplaying its importance. If Towergate hadn't mentioned that option at the time, Miss G would've had to ask Towergate what she needed to do if she wanted to proceed against the recommendation not to transfer.

I also bear in mind that Miss G didn't appear to have much financial knowledge or experience and I don't think she'd have fully understood the significance of a decision to proceed against financial advice. So I think Towergate should've been very careful to ensure she fully understood what she was doing in proceeding as an insistent client. Overall, I think the way in which Towergate presented the insistent client route made it easy for Miss G to follow it and without necessarily fully understanding what she was doing.

I take into account that Towergate gave Miss G repeated warnings that it didn't recommend she transfer (although, as I've said, I think there was some mixed messaging). And she confirmed, more than once, that she'd read and understood the suitability reports, including the risks associated with transferring out of a final salary (DB) pension scheme and that she realised she could be giving up reasonably secure benefits if she transferred. But I can't see that Towergate did much to test Miss G's understanding and explore in any detail with her why, despite the possibility of being worse off in retirement, she nevertheless wanted to go ahead. For example, I note that in her email of 27 August 2008 Miss G simply confirmed that she'd chosen to take the cash payment even though it was against Towergate's advice. She didn't give any reasons why, even though doing so was apparently part of Towergate's

requirements. And Towergate didn't discuss with her if there were any alternative courses of action open to her.

Would Miss G have acted differently?

But, even though there were shortcomings in how Towergate dealt with Miss G, I can only uphold her complaint if I'm satisfied that, had Towergate acted as it should've, the outcome would've been different.

In deciding that sort of issue I reach my conclusions on the balance of probabilities, that is what I consider is more likely to have happened, taking into account all the available evidence and the wider circumstances.

On balance, I'm satisfied Miss G would've wanted to proceed with the transfer anyway. I don't think any flaws in Towergate's advice have impacted on her decision. I think the prospect of a significant enhancement to the CETV (almost doubling it) would've been very attractive to her. Especially as she was able to receive the additional sum as a cash payment (less tax) rather than as an augmentation to her CETV. I think that would've been a significant motivation for her and when she had a clear need and objective for the money – she'd be using it to clear debts and towards a house purchase – buying her family home.

I know there's no reference to that in the suitability report. But it appears to have been mentioned during the initial call with the adviser as it's noted in the fact find. And, in response to Towergate's enquiries, Miss G confirmed that she'd used the extra cash to pay off debt and towards mortgage payments. I don't agree with any suggestion that the availability of that payment wouldn't have impacted on Miss G's decision making – I think the amount was significant and came at a time when she had a need for that money.

Miss G's decision to proceed with the transfer out of the DB scheme appears to have been prompted by Towergate's letter of 18 August 2008, which said '*this exercise*' would be wound up shortly. I think that was a reference to the enhancements to the CETV being about to be withdrawn. It seems Miss G decided she didn't want to miss out on the cash payment and so she confirmed to Towergate that she wanted to transfer.

Even if, at the time, Towergate didn't undertake a sufficient analysis of why Miss G wanted to transfer, including what she wanted to do with the extra money, I think the outcome would've likely been the same – that she'd have gone ahead with the transfer so she could access the extra cash payment. I don't see that further detail or clarity in Towergate's advice or if a more robust insistent client process had been employed would've influenced Miss G or changed the outcome. So I can't say she's lost out because of anything Towergate did (or didn't do) and I'm not upholding her complaint.

I know Miss G will be disappointed with my decision. We've considered other similar complaints and we've upheld some – Miss G was prompted to contact her representative because a former colleague's complaint, made via the same representative, was successful. But we decide each complaint on its own individual facts and circumstances. Cases which might appear similar won't always be decided in the same way. For the reasons I've explained, I'm unable to uphold Miss G's complaint.

My final decision

I don't uphold the complaint and I'm not making any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 29 September 2025.

Lesley Stead
Ombudsman