

## **The complaint**

Ms D complains, via a legal representative, that The Tavistock Partnership Limited ('Tavistock') gave her unsuitable advice to transfer the deferred benefits in an occupational pension scheme (OPS) to a personal pension scheme (PPS). Ms D's legal representative says that Ms D may have been caused a financial loss by the advice to transfer.

## **What happened**

Ms D approached an Independent Financial Adviser (Firm A) in 2017 who referred her to Tavistock in order to discuss the transferring of the deferred benefits that she held in an OPS. These benefits were defined benefits and any recommendation regarding a transfer had to be from a suitably authorised Firm.

Tavistock carried out a fact-find to gather information about Ms D's circumstances, as well as having the background provided by Firm A. It ascertained the following facts about Ms D:

- She was aged 57
- She was divorced
- She expected to retire around age 67
- She was self-employed earning around £60,000 a year and had monthly expenditure around £2,000
- She had an interest only mortgage with £285,000 capital to repay in 17 years, on a residence valued around £625,000
- She had no other savings, investments or pension plans

Tavistock established that Ms D had the following objectives:

- To access a tax free cash (TFC) part of her pension straight away to enable her to reduce her mortgage and restructure the remaining debt as a repayment mortgage to be paid off in 10 years instead of 17.
- To be able to nominate her non-dependent children and grandchildren as beneficiaries of her remaining pension fund so that it would not be lost at the point that she passed away.

Tavistock confirmed the above circumstances and objectives with Ms D in writing.

Tavistock carried out an assessment of Ms D's attitude to risk (ATR) for this pension which it found to be medium to high. Tavistock issued a suitability report to Ms D in December 2017. It recommended that a transfer was suitable in Ms D's circumstances. It recommended that Ms D transfer to a PPS. Tavistock understood that Firm A would advise Ms D regarding the investment of her residual pension fund and would provide her with ongoing advice. It established the investment that Firm A proposed which it agreed was in line with its assessment of Ms D's ATR.

Ms D followed Tavistock's recommendation. She explains that she was happy with the advice and the result. But has since been told by her legal representative that the advice she was given may have been unsuitable. The legal representative complained to Tavistock on Ms D's behalf in November 2022. The reasons it gave for complaining were:

- Ms D wasn't a high earner so a PPS wasn't suitable
- As Ms D was divorced there was no one to support her in retirement
- Ms D didn't have enough working years to recover from any investment losses in her pension
- Ms D had a low capacity for loss and a low ATR
- Tavistock failed to properly understand Ms D's overall financial situation

Tavistock investigated Ms D's complaint but didn't uphold it. It explained that its advice was suitable as it enabled Ms D to meet her objectives. She was able to restructure her mortgage to a repayment mortgage. And she has the flexibility of income that she wanted.

Our investigator wasn't able to resolve the complaint in a way that Tavistock accepted so the case was referred for an ombudsman's decision. I looked into what happened and issued a provisional decision explaining why I didn't think that Ms D's complaint should be upheld. And gave both parties the opportunity to comment further or provide additional evidence before I made a final decision.

Neither Tavistock or Ms D's legal representative provided any further evidence or any additional arguments for me to consider.

### **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.

I have considered the circumstances in this case fully and my final decision remains the same as the decision I provisionally gave. And for the same reasons, which I set out as follows.

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.

#### *The applicable rules, regulations and requirements*

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 of Tavistock's actions here.

- 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 defined benefits OPS transfer.

Having considered all of this and the evidence in this case, I've come to the opinion that this complaint shouldn't be upheld.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6 that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Tavistock should have only considered a transfer if it could clearly demonstrate that the transfer was in Ms D's best interests. And having looked at all the evidence available, I'm satisfied it was reasonable for Tavistock to recommend that it most likely was.

### *Financial viability*

Tavistock have shown us the questionnaire that Ms D completed in order to determine her ATR. And the end result giving her a risk score of 5 on a scale of 1 to 7. I've no reason to doubt that Ms D completed the questionnaire honestly and it reflected her ATR at that time. But I can also see that Tavistock's suitability report reflects that it discussed the ATR further with Ms D and thought that taking a medium approach to risk would be more suitable. Given this was her main pension for retirement, I think this was fair. Her capacity to recover from significant investment loss was hampered by the fact she had around 10 more working years. But it was a long enough term to make a medium investment risk suitable and within her assessed ATR. I can see that Tavistock enquired with Firm A about the intended investment agreeing a medium risk approach. Overall I think this was fair.

The advice was given after the regulator gave instructions in Final Guidance FG17/9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published by the Financial Ombudsman Service on our website. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, I think they provide a useful indication of what growth rates should have been considered reasonably achievable for a typical investor.

The critical yield required to match Ms D's benefits at age 65 was 3.96% if she took a full pension and 3.4% if she took TFC and a reduced pension. I know that Ms D took her TFC early, but even if she had not, I think it's more likely than not that she would have done so at her scheme's normal retirement age regardless. I say this because she had £285,000 capital to repay on her mortgage at the end of its term. She had no other means to pay or reduce that other than by using the largest TFC available from this pension scheme. So I think the lower critical yield is the most relevant.

The relevant discount rate closest to when the advice was given which I can refer to was published by the Financial Ombudsman Service for the period before 1 October 2017 and was 3.4% per year for 7 years to retirement. For further comparison, the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2% per year.

I've taken this into account, along with the composition of assets in the discount rate, Ms D's medium ATR and also the term to retirement. There would be little point in Ms D giving up the guarantees available to her through her OPS only to achieve, at best, the same level of benefits outside the scheme. But here, given the lowest critical yield was 3.4%, I think it was borderline whether Ms D was likely to improve on the overall benefits of the OPS at retirement, as a result of investing in line with that attitude to risk.

Tavistock provided cashflow models for Ms D which it says showed she would've been able to meet her needs in retirement through taking a drawdown income. I've considered this and think that Tavistock took care to check whether or not Ms D would be able to meet her anticipated expenditure in retirement following the transfer. It considered her retiring at 67 (as it had been told Ms D intended) by which time she expected her restructured mortgage to be redeemed. It anticipated her expenditure still being £2,000 a month (even though that current expenditure figure included mortgage repayments). It showed that, even assuming the lower projected investment returns, her residual pension fund would be around £200,000 at age 91, or £500,000 if medium projected investment returns were achieved. Overall, I think that Tavistock went to reasonable lengths to confirm that Ms D's needs could be met in the longer term as well as her immediate objectives.

Tavistock's recommendation to Ms D was that the critical yield of 3.96% was achievable. But, as I indicated above, I think that it was borderline. If Ms D wanted to take benefits in the same format, it was far from clear that she could improve on her scheme benefits at the scheme retirement age of 65, or even perhaps her intended retirement age of 67. Of course financial viability isn't the only consideration when giving transfer advice; there might be other considerations which mean a transfer is suitable. In this instance, the income modelling did make it likely that, by taking benefits in a different way, she was likely to be able to achieve her required level of income. Although that would be dependent on investment returns which were not guaranteed. But I don't think the financial viability test in this case made this transfer so obviously unsuitable that other reasons may not have made it in Ms D's best interests.

### *Flexibility*

Ms D had an outstanding mortgage with a 17 year term. It was an interest only mortgage, with a capital sum of £285,000. It meant that Ms D would still be paying her mortgage until age 74 and at that stage be left with the capital sum still to be paid. I haven't seen any evidence that Ms D had an alternative plan to pay that debt. Other than, perhaps, being forced to sell her home. She would still, of course have equity from that sale, but that doesn't mean that Ms D would want to be left with that option. Ms D didn't have any savings or other assets she could've used to restructure her mortgage in the way she wanted. I understand that Ms D was being advised separately on her mortgage. But I can't see that Tavistock considered or costed that as well. However, taking out a repayment mortgage for £285,000 over the remaining 10 years that Ms D planned to work would, most likely, have been prohibitively expensive. It certainly seems that the affordability for Ms D's plan to repay her mortgage and capital over 10 years depended on her accessing at least £130,000 TFC straight away.

Tavistock identified that Ms D's OPS would provide her with a similar TFC sum at age 65 as well as an income around £22,000. But accessing a similar amount of TFC at 65 would only leave Ms D with around 2 years in which to restructure and repay her mortgage if her intention was to clear it by the time she stopped working. Which wouldn't have been as suitable a way to meet her objectives. She may instead have been able to have restructured to a repayment mortgage over a longer term. But I'm not sure that would have been more suitable for her either. And would have impacted her adversely by her having to continue making mortgage payments for years after she stopped working.

Overall I think that Tavistock fairly considered Ms D's overall circumstances and her requirements. She was of an age where she was able to access her pension and had a persuasive reason for needing TFC at that time. The fact that Ms D wanted to do so, or may have thought it was a good idea, didn't mean that Tavistock should have recommended it. Tavistock instead needed to use its expertise to compare what she was giving up with what

she stood to gain and make a recommendation on whether what she wanted to do was in her best interests. And in this case I think that is what Tavistock did.

Tavistock clearly considered and explained the benefits available through the OPS. And made it clear they were guaranteed. It identified that Ms D needed to pay off her mortgage, including the remaining capital. That debt would need to be paid for out of her income, and I don't think it was inherently unsuitable to do that, in part, using income from her pension if there was no obvious alternative. And, in this case, I can't see that there was. So, on balance, I'm satisfied this was necessary in the circumstances. And as Ms D didn't intend to retire fully until 67, I think she would be able to draw enough income from the personal pension to meet her needs in retirement.

### *Death benefits*

Ms D was single and did not have any dependent children. She was clear with the adviser that she did not have any need for the spouse's or dependent's pension that the DB scheme provided. So, I don't think losing these benefits was likely to disadvantage Ms D. I think she preferred the ability to pass on whatever remained of her pension fund to beneficiaries of her choice on her death. I've considered that Ms D may have gone on to remarry before reaching age 65, but that was an unknown, and Ms D was clear to Tavistock and our investigator that her preferred beneficiaries on death were her adult children. But were that to change, her nominated beneficiary could alternatively be her spouse were her circumstances to change.

I would expect Tavistock to have considered whether there were alternative ways for Ms D to provide a similar level of death benefit that may have been more suitable. And I can see from the suitability report that it gave Ms D that it had explored the option of a separate life assurance policy that might provide a similar level of cover. It discounted it because it wasn't a cost effective alternative. Which I think was reasonable.

### *Summary*

Overall I think that the Financial Viability of Ms D's transfer was finely balanced. It was possible that Ms D might have achieved a level of growth to be able to match the benefits given up. But I don't think it was likely to have exceeded that. So taking on all of the investment risk, with little prospect of benefits of a higher capital value doesn't by itself seem suitable. In this case though I think that Ms D had a genuine and persuasive need for TFC earlier than her OPS retirement age. And it seemed more likely than not that she wouldn't want to replicate the benefits in the way her OPS presented them as she was unlikely to want to include a similar spouse benefit given the choice. So it was reasonable for Tavistock to consider the alternative of replacing her OPS income without the provision of spouse death benefits. Its cash flow analysis made this look achievable and sustainable by drawdown. I think these objectives were reasonable and it wasn't unsuitable for Tavistock to conclude that this transfer was in Ms D's best interests.

### **My final decision**

For the above reasons I am not upholding Ms D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms D to accept or reject my decision before 9 November 2023.

Gary Lane  
**Ombudsman**