DRN-2539691

The complaint

Mrs M complains that due to delays caused by Cowley & Miller Independent Financial Services Limited (Cowley & Miller) she received a lower transfer value for her occupational pension scheme benefits than she would otherwise have done.

What happened

It appears that Mrs M had previously discussed transferring her deferred defined benefits (DB) pension benefits with Cowley & Miller. I understand the Mrs M wanted to raise a lump sum of around £40,000 to fund an extension and adaptions to her home. In order to fund the building work Mrs M was advised by Cowley & Miller to transfer her DB benefits to a personal pension plan and take the tax-free cash from this pension pot.

Our investigator set out the following timeline:

- 17 October 2019, Mrs M's DB pension scheme administrator sent a 'Statement of entitlement to a guaranteed cash equivalent' for Mrs M, directly to Cowley & Miller. The transfer value was £155,640.53. The statement said the transfer value was guaranteed to 17 January 2020.
- 18 October 2019, Mrs M signed Cowley & Miller's client agreement, and its adviser updated an existing fact find document.
- 5 November 2019, a pension transfer report, including a transfer value analysis was issued to Mrs M.
- 12 November 2019, Mrs M's DB pension scheme administrator sent an immediate retirement benefits quotation to Mrs M.
- 22 December 2019, Cowley & Miller sent an application form to Mrs M to transfer her DB pension benefits to a personal pension plan.
- 22 December 2019, Cowley & Miller recorded that it had told Mrs M that a compliance check would be required, and this might mean the 17 January 2020 deadline for the guaranteed transfer value was missed.
- 24 December 2019, Cowley & Miller issued its recommendation report to Mrs M.
- 11 February 2020, Mrs M's DB pension scheme administrator emailed Cowley & Miller, referring to an earlier email of 27 January 2020. It said the financial advice declaration hadn't been fully completed and it required confirmation of its FCA registration.
- 12 February 2020, the pension transfer was completed. However, the transfer value issued on 17 October 2019 had expired and the revised transfer value was £145,175.27 (£10,465.26 less than the previous transfer value).
- 18 February 2020, the personal pension plan provider confirmed to Mrs M that a tax-free lump sum of £36,293.81 would be paid within five working days and the residual amount of £108,881.46 (before the adviser fee was deducted) would be invested.

Mrs M complained to Cowley & Miller on 18 February 2020. She said that, due to delays it had caused, her pension transfer had not been completed before her transfer value expired. She said the revised transfer value was nearly £10,500 less than it would have been if the pension transfer had been completed more promptly.

It appears that Cowley & Miller did not respond to Mrs M's complaint. As she did not receive a response from the business Mrs M referred the matter to this service.

Having carefully considered Mrs M's complaint our investigator said he felt it should be upheld. In summary, he said that Cowley & Miller knew when it received the transfer value on 17 October 2019 that it was only guaranteed until 17 January 2020. This meant it had three months to complete the advice process and arrange the transfer.

Despite being aware of the date the transfer value expired, he noted that six weeks elapsed between the date the business received all the information it needed to provide its advice (12 November 2019) and the date it issued its advice to Mrs M (24 December 2019).

Cowley & Miller didn't offer any explanation as to why there was such a long gap between receiving all the information required to provide its recommendation, and the recommendation being issued.

Our investigator said that given Cowley & Miller knew that the transfer value was only guaranteed until 17 January 2020 it would have been aware that it was important to avoid any unnecessary delays.

He said he felt Cowley & Miller ought reasonably to have been able to issue its recommendation to Mrs M up to four weeks earlier than it actually did. Had it done so he said he felt it would have had 'ample time' to submit the personal pension plan application and for the DB pension transfer to have been processed before the transfer value expired on 17 January 2020.

He also noted that it appeared Cowley & Miller had caused further delays even after the transfer value had expired. In particular, he noted that on 27 January 2020 the DB scheme administrator asked the business to confirm its details, but Cowley & Miller didn't respond until 11 February 2020 when the scheme administrator chased it. Our investigator noted that this failure to respond caused a further avoidable delay.

In order to put matters right he said Cowley & Miller should put Mrs M in the position she would now be in, but for the delays it caused.

Cowley & Miller responded to say it did not accept our investigator's view. It said it would provide a response setting out why it felt the complaint shouldn't be upheld. However, no further response has been received from the business.

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, and in the absence of anything from the business to explain why it feels it did not cause unnecessary delays when dealing with Mrs M's pension transfer, I think this complaint should be upheld. I'll explain why.

The covering letter sent with the 'Statement of entitlement to a guaranteed cash equivalent' sent to Cowley & Miller on 17 October 2019 by Mrs M's DB scheme administrator set out:

If we receive the 'Transfer agreement' and financial advice confirmation after the guarantee expiry date of 17 January 2020, we will work out the transfer value again as it may be higher or lower than the value quoted on the enclosed statement of entitlement.

In view of this I am satisfied that Cowley & Miller knew that if the transfer was completed after 17 January 2020 there was a risk that the transfer value would be reduced.

Despite this it appears that it took the business six weeks to provide its recommendation to Mrs M after it had all the necessary information to make a recommendation.

It is not clear to me why Cowley & Miller took so long to issue its recommendation. Given that it was aware of the tight timescale to complete the transfer – and it felt the transfer was suitable for Mrs M's personal and financial circumstances – I think it should have prioritised Mrs M's advice. I see no reason why the recommendation couldn't have been prepared within two weeks of Cowley & Miller having received all the necessary information.

Based on the information that has been provided, and in the absence of anything from Cowley & Miller to show that it was prevented from issuing its advice before 24 December 2019, I think it had all the necessary information to provide a recommendation by 12 November 2019, when Mrs M received details of the immediate retirement benefits available to her from the DB scheme.

Like our investigator I think it would have been reasonable to expect that Cowley & Miller could have provided its recommendation to Mrs M by 26 November 2019, two weeks after it had received all the information it might require to make its recommendation.

However, it was six weeks before Cowley & Miller issued its advice to Mrs M.

If the recommendation had been provided to Mrs M by 26 November 2019, on the balance of probabilities, I think the DB transfer would have been completed before the transfer value expired on 17 January 2020.

In the absence of anything to show otherwise, I am satisfied that the delays caused by Cowley & Miller led to the transfer not being completed by the date the transfer value expired. As this is the case, I think Cowley & Miller should compensate Mrs M for the financial loss she has suffered as a result of its poor service.

I am mindful that Cowley & Miller charged fees of around £4,500 for the advice it provided to Mrs M. I think Mrs M was entitled to expect efficient, timely service in return for an initial fee of 3% of the transfer value of her DB pension benefits.

I have also taken into account that there is a file note in the records Cowley & Miller has provided to this service, dated 22 December 2019, that says:

I spoke to [Mrs M] about our third-party check procedure and explained that her transfer would have to be checked by our Compliance Consultant…. and it may not be possible to submit her paperwork in time to meet the guarantee date of 17 January 2020 unless pre-approval is received in time to meet the deadline…

…[Mrs M] confirmed that she wished to proceed regardless of any potential delay [and] would be happy to accept a lower value if this resulted in a recalculation of the transfer value provided this was not more than 10% lower. I explained that this was detailed in the transfer paperwork I would require her to sign and would post it for her signature today and she should only complete this provided she fully understands and accepts the risk of any potential delay.

Having carefully considered this file note, I think it highlights that Mrs M was focused on her need to fund the necessary alterations to her home. And I note that the reason Cowley &

Miller had to warn Mrs M that her pension transfer might not be completed in time was due to the avoidable delays it had caused.

There is nothing in the file note to suggest that it told Mrs M that, despite having had the necessary information to make a recommendation since 12 November 2019, it still hadn't provided its recommendation – and therefore it hadn't been submitted for a compliance review.

I am also mindful that even after the deadline for the DB transfer value had passed Cowley & Miller continued to cause further delays. On 27 January 2020 the DB scheme administrator asked Cowley and Miller to confirm its details, but it didn't respond until 11 February 2020 when the scheme administrator chased it.

Having carefully considered this matter I think Cowley & Miller should compensate Mrs M for the financial loss she has suffered as a result of the delays it caused. It should also pay Mrs M £250 for the trouble and upset this matter has caused her.

Putting things right

As I have set out above, I think Mrs M's complaint should be upheld. My aim is to put Mrs M in the position she would be in now, but for the delays caused by Cowley & Miller.

I think it is reasonable to assume that, without the unnecessary delays, Mrs M's cash equivalent transfer value could have been transferred 43 days earlier than it was actually transferred. As I set out above, I am of the view that Cowley & Miller was in a position to provide its recommendation to Mrs M by 26 November 2019. I think its poor service led to a 28-day delay when providing its recommendation. And I think it then caused a further 15-day delay when it failed to respond to Mrs M's DB pension scheme administrator promptly.

Had Cowley & Miller not delayed providing its advice and responding to the DB scheme administrator I think the transfer value would have been paid to Mrs M's personal pension plan provider by 31 December 2019.

In order to resolve this matter, Cowley & Miller should pay Mrs M:

Tax-free cash

A = the notional tax-free cash that would have been payable on the higher transfer value within five working days of 6 January 2020 (43 days prior to the personal pension provider's letter of 18 February 2020);
plus
B = interest on A at 8% simple from the date tax-free cash would have been paid to the date tax-free cash was paid;
minus
C = the actual tax-free cash Mrs M received;
plus
D = interest on A – C at 8% simple from the date tax-free cash was paid to the date of payment of compensation.

Income tax may be payable on any interest paid. If Cowley & Miller considers that it is required by HM Revenue & Customs to deduct income tax from the interest, it should tell Mrs M how much it has taken off. Cowley & Miller should also give Mrs M a tax deduction certificate if she asks for one, so that she can reclaim the tax from HM Revenue & Customs if appropriate.

Loss to pension

A sum sufficient to augment the value of the receiving scheme to its notional current value, had the higher cash equivalent transfer value been transferred at the earlier point.

The notional value will presumably need to be confirmed by the receiving personal pension plan provider.

The payment should take account of any available tax relief. If the personal pension provider will not accept the payment, or if it would conflict with any protection or allowance, the gross loss to the plan should be paid to Mrs M, less tax at her marginal rate. This is assumed to be the basic rate of income tax.

Cowley & Miller should provide details of its calculations to Mrs M.

In addition, Cowley & Miller should pay Mrs M £250 to compensate her for the distress and inconvenience this matter has caused.

My final decision

My decision is that I uphold this complaint. In order to put matters right Cowley & Miller Independent Financial Services Limited should calculate and pay the redress as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs M to accept or reject my decision before 27 January 2022.

Suzannah Stuart
Ombudsman