DRN-3516824

The complaint

Mr R complains that LEBC Group Limited (LEBC) took too long to provide him with an advice report. And that the delay caused a financial loss.

What happened

LEBC acted as financial advisers for Mr R. On 10 October 2019 Mr R met with his adviser to discuss his pension arrangements. He wanted to access his benefits in a more flexible way than his existing provider could offer. Mr R's adviser said she'd arrange for a recommendation report to be prepared.

Mr R signed and returned the required Client Services Agreement on 22 October 2019. LEBC said they sent his case to the team who would gather the necessary information and prepare the report before Mr R's adviser reviewed it and then presented it to Mr R.

Mr R said he called LEBC in December 2019 and at the end of January 2020 as he hadn't heard from them. His report was eventually finalised on 27 February 2020. And Mr R's adviser met with him on 6 March 2020 to present the details to him.

Mr R's adviser called him on 9 March 2020 to give him the current values of his funds. At this point he raised a complaint with LEBC. He complained about the time taken to produce his advice report. And also said he was concerned that transferring would leave him open to out of market risk. He also felt LEBC hadn't communicated well with him throughout the process.

LEBC issued their final response to the complaint on 1 May 2020. They upheld Mr R's complaint about the delayed report and lack of communication. They apologised and offered £300 compensation for the concern and inconvenience they'd caused. LEBC suggested an approach to mitigate the risk of being out of the market whilst he transferred. Although this approach turned out not to be possible. They acknowledged that Mr R had chosen to wait until financial markets were more settled. And that Mr R felt he'd been put in a position where he had to decide on his transfer when the markets were very volatile. They said there was always a risk with this kind of transaction. And that it wasn't possible to time it perfectly without the benefit of hindsight. They also said that market movements weren't within their control. And therefore they didn't think they could be held responsible.

Mr R didn't agree with LEBC. He felt they hadn't fully addressed his concerns about the report being delayed due to a lack of staff, due to redundancies. He didn't feel that the report should've taken four months. He acknowledged that market movements weren't within LEBC's control, but said that if he'd been given the report in a timely manner – late November or December 2019 – his pension funds would've been transferred before the period of extreme market volatility. Mr R accepted that his pension funds would've decreased but said they would've been in a better monitored platform that offered the drawdown functionality he needed. Mr R was disappointed LEBC had suggested a mitigation that wasn't possible. He said he still had the risk of losing out by being out of the market for around 10 days.

Mr R brought his complaint to this service. Our investigator felt it should be upheld. He felt that LEBC should've produced the required report by 10 November 2019, with the pension transfer completing two weeks later. He felt that LEBC should consider if Mr R had suffered a loss due to the delay. He felt Mr R should be put as close as possible into the position he would probably now be in if the advice had been provided in a timely fashion. To put things right, he felt LEBC should compare the performance of Mr R's investment to assess whether he had suffered a loss. If there had been a loss, he said LEBC should pay the amount calculated into Mr R's pension plan. He also felt LEBC should pay the £300 compensation for distress and inconvenience.

LEBC didn't agree with our investigator. They maintained they'd recognised the delays incurred when they'd offered £300 compensation.

A second investigator reviewed the complaint. She came to the same conclusion as the first investigator and felt the complaint should be upheld, with the same redress.

LEBC didn't agree with our second investigator. They said they felt their offer of £300 compensation was fair and reasonable.

As agreement couldn't be reached, the complaint came to me for a review.

I understand that Mr R has since followed LEBC's advice. And his transfers and pension investments are now complete.

I issued my provisional decision on 9 May 2022. It said:

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 don't intend to uphold it. I acknowledge that the report took longer than it should've to prepare. And that LEBC should've made Mr R aware that it would take longer than he expected. I consider that they made an error in communication. But I don't agree with either of our investigators that LEBC should consider if Mr R had suffered a loss due to the delay. I'll explain why.

LEBC have accepted that they should've produced the report more quickly and that they should've communicated better with Mr R. I've asked them to provide further information so that I could assess when they – and Mr R – could've reasonably expected the report to have been produced. I've done this so I could assess whether the £300 LEBC offered for the delays and poor communication was fair and reasonable. I also looked to see if there were any established service standards for the production of reports.

I've also carefully considered the contents of the February 2020 report recommending the pension transfer.

The February 2020 report

This report contains advice to transfer two pension plans from one provider to another in order to better meet Mr R's retirement requirements. From what I understand, the recommendations have now been followed in full by Mr R.

Page 22 of the report covered the Disadvantages & Risks of the proposed recommendation to transfer. This stated:

It is important that you are aware of both the disadvantages of my recommendations, and the risks that are involved.

Disadvantages of My Recommendation

• You will be 'out of the market' for a short time whilst the transfer is taking place. During this

time, as you will not be invested, you will not benefit from any growth in the market. However, if the market were to fall you would not suffer losses during this period.

As financial markets are, by their nature, volatile, this statement is always true. I do acknowledge why Mr R felt that the risk of being out of the market was even greater than usual after he'd accepted the recommendations in the report in March 2020. Global markets were extremely volatile during this period as the world reacted to the coronavirus pandemic. But I'm satisfied that LEBC had no way of knowing that in taking longer to produce their recommendation report than they would usually have expected to they would cause Mr R to have a greater risk of being out of the market than usual. The report could've been finalised exactly when Mr R had expected and there could've been an extremely volatile market then. Of course, with the benefit of hindsight, we know that the markets weren't particularly volatile in November 2019. But without that hindsight, LEBC would've had no way of knowing whether or not an early report or a late report would make the out of market risk better or worse for Mr R. I also note that Mr R was able to wait to carry out the transfer when markets had stabilised. Therefore I don't consider that the delayed report caused him to face a greater out of market risk than he would've otherwise faced if the report had been produced more quickly.

So I agree with LEBC that it wouldn't be fair or reasonable to hold them accountable for market movements, as these are outside of their control. And that there is always a risk with any transfer of funds that the markets may be more volatile.

When should the report have been produced?

LEBC said that although market movements were outside of their control, it was within their control to manage the level of service they provided to Mr R. They felt they'd made a fair offer for the poor service he'd received with the report.

Mr R said that LEBC had reduced the number of report-writing staff before his report was produced. He said his adviser had told him this. I understand that this had led to LEBC needing to prioritize more urgent cases. So I asked LEBC to confirm that they'd made a business decision which had led to redundancies in the report planning area. I also asked a number of follow up questions if that was correct.

LEBC said they couldn't comment on business decisions taken regarding staffing as these were internal matters. They felt that what was of relevance was that they had recognised the unacceptable delay in getting the report to Mr R. And that they'd offered redress in respect of this. I also asked LEBC if they had assigned Mr R's report to the correct position in the report queue. LEBC said they had nothing to evidence this.

From what I've seen, it took three months from the case being sent to paraplanning research at the end of October 2019 until it was picked up at the end of January 2020. I asked LEBC how long they would expect this process to have taken.

LEBC said they would reasonably expect a customer to wait no more than eight-12 weeks for a report to be written and issued following referral to the paraplanning team. They said this would depend on the research required, the length and the complexity of the report. LEBC said that the level of information required for Mr R's report meant that it took longer than normal to research and write. They said they needed to obtain very specific and detailed information from his pension provider to ensure that their recommendation was *thoroughly researched and suitable for Mr R. And that some of that information had taken over a month to obtain. They acknowledged that in Mr R's case this hadn't happened as quickly as it should've.*

I've also looked at the client services agreement. This doesn't specify the length of time a report should take. I also asked Mr R to tell us on what he'd based his expectations for the timing of the report production.

Mr R said he felt the report should've taken six to eight weeks. And that this explained why he'd chased LEBC for the report in December 2019. He said if it had been normal for a report to take four months, he would've been made aware of this when he queried the delay. He said his IFA had tried to get LEBC to move his case further up their queue but that hadn't been possible.

I agree that LEBC are entitled to make business decisions about the number of staff they employ. They're entitled to reduce that number. However, I would expect them to inform their customers if service standards were likely to fall as a result of a smaller workforce. I've no evidence that they told Mr R that his report was likely to take longer to produce than normal.

From what I've seen, Mr R had no pressing need to carry out the transfers, so I can see why his case wasn't prioritized. I say this because the February 2020 report stated that Mr R was working to a retirement age of 65. It also stated that he had no particular need for income at that time and a large emergency fund. So I asked him if he had a pressing need to transfer

to the new provider by a particular point in time as I hadn't seen any evidence of any

particular need.

Mr R said that his retirement plans hadn't changed between February 2020 when the report was issued and June 2020 when most of the transfer took place. He said that he'd previously stated that he'd expected the transfer to have taken place BEFORE February 2020. And therefore before the "unsettled state of the Stock Market due to Covid". Mr R said that his adviser told him at his October 2019 review that two of his pensions didn't offer a drawdown facility, which had been agreed was the most suitable type of pension for him. He said that given his age at the time, it seemed prudent to begin the process of change to one that offered this.

Based on what both parties have told me, and the client services agreement, I've no evidence that Mr R was told that the report would be with him within a certain period of time. However, I agree with Mr R that he was reasonable to expect the report within a certain timeframe. He's suggested six to eight weeks, whereas LEBC have suggested eight-12 weeks.

The report was actually produced in around four months. Mr R felt that although he acknowledged detailed information required from a third party took over a month to obtain, he should've received the report more quickly. He also told this service that LEBC had told him they were working hard to improve their report-writing process. Therefore he felt that LEBC should've told him their reports were taking longer than usual.

As there was no specific service standard for the provision of the report Mr R needed, and as he hadn't been told when to expect that report, I don't consider it fair or reasonable to state that LEBC should've produced the report by a specific date in November 2019, as both of our investigators suggested. From what I've seen, there was no explicit service standard for the production of such reports. And Mr R was – from what I've seen - correctly not identified as a priority case, so his report was fairly put in a queue. I've also seen that around *four weeks of delay were caused by the original pension provider being very slow to provide information LEBC required. So I don't consider that it wouldn't be fair or reasonable to suggest that LEBC should've worked on Mr R's report immediately and taken responsibility for the delays caused by external providers that were outside of their control.*

I also note that Mr R wanted to avoid being out of the market when it was in a volatile state. I can also see that when LEBC upheld his complaint they made a suggestion to help resolve the issue which wasn't possible. I understand how frustrating this would've been for Mr R.

Mr R has also told this service that as the market was volatile in March 2020, when the report was presented to him, he'd agreed to wait until such time as the market was steadier. He told this service that nobody at LEBC contacted him when it did steady somewhat. And it was only when he spoke to someone there in late May 2020 that his own transfer finally commenced.

LEBC have shared an internal note dated 1 May 2020. This said they'd spoken to Mr R "the week before last". This would've been mid-late April 2020. They said they'd explained that markets had started to settle down a bit and that they could look at the re-registration process which would mean Mr R would only be out of the market for a day or two. The note recorded that Mr R was pleased with this but didn't want the adviser to proceed further at this stage: "preferring to leave things as they are for a couple of months". It also records that a diary note had been made to contact Mr R in June 2020.

Therefore, from what I've seen, LEBC did contact Mr R about his transfer in April 2020. And they agreed a plan with him which would ensure that he'd only be out of the market for a day or two.

I acknowledge that LEBC have themselves accepted that it took longer than they would've liked to produce the report. And they also acknowledged that they hadn't communicated as well as they could have about the report with Mr R. For this reason, they offered £300 compensation. Based on the evidence I've seen, the delays caused Mr R concern and he had to chase LEBC a number of times for the report. But LEBC were able to suggest a plan – which Mr R accepted – to minimise the out of market risk he would face when the transfer went ahead. Therefore, I'm satisfied that the £300 LEBC offered for the delayed report and the poor communication was fair under the circumstances.

As I don't consider there was a fixed date by which the report should've been produced, I can't fairly say that LEBC should be held responsible for the delayed transfer of Mr R's pension plans. I say this because after the report was produced, Mr R was able to time his transfer so that the market was at a level of volatility that he was comfortable with. I appreciate this meant he had to wait several months to transfer into the pension that had been recommended for him. And that the new pension provider would also monitor his funds better, so he was missing out on the enhanced monitoring while he waited. But it wouldn't be fair or reasonable to hold LEBC responsible for that. They'd made no commitment to him to provide the report by a certain date, or to ensure the transfer took place by a certain time. When the transfer did go ahead, LEBC found a way to mitigate the out of market risk Mr R was concerned about. Therefore I don't intend to uphold the complaint.

Response to my provisional decision

LEBC accepted my provisional decision and had no further points to add.

Mr R was disappointed with my provisional decision. He reiterated his acknowledgement that some of the delays had been caused by external providers. He said he didn't understand what I'd meant by my statement: "*When the transfer did go ahead, LEBC found a way to* *mitigate the out of market risk Mr R was concerned about*". And asked me to clarify my point.

Mr R shared a timeline of communications he'd had with LEBC and other relevant parties. He said he would've expected LEBC to have recorded the dates of calls they'd had with him, rather than referring to having spoken to him "*the week before last*". He said he would've expected further notes and updates on his file given his situation. He asked if LEBC had any such notes. And if they referred to contacting him in June 2020.

Mr R also said that although I considered that no timescale was given for the report to be produced, he was surprised that he hadn't been informed that the report would take longer than usual when his wife queried where it was. He said the delay and lack of information caused him considerable extra worry and stress.

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.

Regarding Mr R's understanding of what I felt the mitigation was, I note that Mr R said he was concerned that transferring would leave him open to out of market risk. But from what I've seen, LEBC were able to suggest a plan – which Mr R accepted – to minimise the out of market risk he would face when the transfer went ahead. This is the mitigation I was referring to.

I acknowledge that Mr R feels that LEBC should've had more detailed notes about their contact with him. But I'm satisfied that the information LEBC provided to this service was sufficient for me to make a fair and reasonable decision on this case. I'm unable to tell LEBC that they should have made more notes, or to tell them that they should change their procedures.

Having carefully considered Mr R's points, I'm not persuaded to change my opinion. I remain of the view I set out in my provisional decision.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 4 July 2022.

Jo Occleshaw
Ombudsman