

The complaint

Mr H complains that Argentis Financial Planning Limited unreasonably delayed the implementation of his requests for a lump sum withdrawal and change of investment strategy causing him a financial loss.

What happened

Mr H had been a client of a firm of financial advisers I'll refer to as "G". A fact find of his circumstances was last compiled in February 2019. My understanding is customers of G including Mr H were transferred to a firm called Harwood, which is a trading style of Argentis Financial Planning Limited ("Argentis"), so I'll just refer to Argentis in the decision.

In January 2021 Mr H contacted Mr C at Argentis to say he understood he was now his adviser following the transfer of business from firm G. Mr H had retired and was receiving income from a defined benefit ("DB") pension. As well as some other investments, he also had a personal pension plan valued at around £1.4m, held with Old Mutual Wealth ("OMW") in two funds ending "626" and "627". He was due an annual meeting to review his retirement provision, the performance of his investments and confirm his risk profile. He also wanted to confirm Argentis' fees following the transfer.

In the meeting Mr H said he needed £25,000 from his OMW pension for home improvements. And going forward he wanted to use it to supplement his income now he'd stopped working. Argentis said it would produce a report setting out its advice. Mr H said he felt comfortable with his risk profile of "*cautious moderate*". Having reflected further, on 10 February 2021 Mr H said he thought he could take a little more risk (to "*moderate*") to benefit from the anticipated market recovery. He confirmed he wished to crystallise a total of £100,000 of his OMW pension (£50,000 from each fund) in order to release a tax-free sum of £25,000 (£12,500 from each), with the remainder placed into a drawdown arrangement.

Mr H returned the signed withdrawal paperwork to Argentis promptly on 3 February 2021, but despite him chasing progress on several occasions, and in March stressing he was keen for the investment changes to be made before the end of the tax year, the recommendation report wasn't produced until 13 April 2021. The report recommended the course of action Mr H wished to take, (releasing a tax-free lump sum from each plan and increasing the risk profile of his investment strategy). Mr H signed the instructions for the portfolio restructure on 21 April 2021, but the tax-free cash ("TFC") wasn't released until 17 and 18 May 2021, with the fund switches taking place about five days later.

Overall the process took around 16 weeks, which was far longer than the six-to-eight weeks Mr H had experienced previously. In that time the cautious-moderate funds he remained in performed worse than the moderate funds he should have been switched to, which caused him a financial loss.

Mr H complained to Argentis, which admitted things had taken a bit longer than they should, and some other clients had been prioritised ahead of him, due to pressure caused by the end of the tax year. It said the process should have been completed around 8 April, but

Argentis said the delay hadn't led to a financial loss, as the fund value on 8 April would've been lower. It offered £250 for the poor service, which it later increased to £500.

Mr H wasn't convinced by this and ended his relationship with Argentis. He referred his complaint to this service in November 2021. One of our investigators reviewed the timeline provided by Argentis, and considered 8 April was too slow. He said Mr H should've had his payments around 17 March and the fund switches carried out the following day. So he said Argentis should carry out a loss calculation using those dates, (meaning Mr H would've received the funds in the 2020/21 rather than 2021/22 tax year) and to pay any loss to Mr H. He didn't agree the delay meant Mr H had lost the opportunity to invest his TFC in an ISA, as he'd seen evidence to show Mr H had already utilised his allowance for 2020/21. But he agreed with the £500 for the trouble and upset Mr H had experienced.

Mr H accepted the investigator's outcome, but Argentis didn't. It said the investigator had used an unrealistic timescale based on how long things generally take during the year, not at the end of the tax year. Producing a recommendation report takes around a month due to the amount of work it involves. While Mr H said he was "keen" to get things resolved quickly, he'd said the funds were for home improvements during the year. He hadn't let them know there was any particular urgency to receive the funds before the end of the tax year, which is a busy period for financial firms, plus there was the impact of the Easter holidays. So it had given priority to those clients who needed end of tax-year advice. It stood by the comparison date of 8 April 2021, which didn't show a financial loss.

I issued a provisional decision in February 2023 in which I considered:

- Whether Argentis had taken an unreasonably long time to complete Mr H's annual review.
- If it had been fair of Argentis to prioritise other clients over Mr H, so that his release of TFC and change of investment strategy happened too late to fully benefit from the anticipated market recovery.
- And if so, when the process ought to have been completed.

I made the following findings (in summary):

- I didn't think Mr H's report should have been treated as urgent, but he shouldn't have been disadvantaged simply because Argentis didn't have the capacity to meet its usual timescales.
- I didn't think it was unreasonable that Argentis made a business decision to prioritise transactions it knew to be urgent, bearing in mind the end of a tax year is a busy period, and it appeared the transfer of clients from firm G may have had an impact. Mr H hadn't expressed any particular urgency (at the outset at least), or mention wishing the transaction to be completed within the tax year;
- But if satisfying one group of clients meant others like Mr H waiting longer, then expectations should have been managed from the outset. This would have prevented Mr H having to chase the adviser so many times. And had he known of the likely delay he could've mentioned his intention that the release of TFC and fund switches be completed in the 2020/21 tax year. And if this wasn't possible with Argentis, to have enabled Mr H to seek advice elsewhere.
- Argentis said without unnecessary delay the process would've completed on 8 April, but as the policy value was lower then, Mr H hadn't lost out financially by the delay.
- Our investigator's alternative timescale of seven weeks, (set out in the view so not repeated here), showed the TFC should've been released on 17 March, and the switches carried out on 18 March. But I didn't think a fair outcome should be based on the earliest point it could've completed. So I looked at what I thought was reasonable in the actual circumstances, including that it was the end of the financial year.

- Mr H's new financial adviser at firm "O", who used to work at Argentis (or firm G) said they had *"tried to complete reviews within a 6-8 week timescale, though this would of course vary due to workloads"*. Suggesting this timescale was an average to be aimed for, rather than a service level agreement which clients could hold Argentis to, and compliance varied throughout the year.
- The delay was partly due to the adviser Mr C being on leave for the whole of the week after Easter and a couple of days the following week. I said staff are entitled to leave, and may avoid the period prior to the tax year end, but it wasn't fair for the lack of cover within Argentis to cause additional delays for Mr H.
- Argentis provided no evidence Mr H had been warned about the possibility of delays due to the end of the tax year rush. Mr H had chased the adviser first on 15 February when he hadn't received the report, and several times subsequently. While his email on 11 March said he was *"keen"* to receive the TFC and arrange the fund switches by the end of the financial year, it didn't appear he explained why or said it was imperative.
- A call apparently took place on 18 March between the adviser and Mr H in which his ISA contribution for 2020/21 was discussed, and the possibility of selling a holding of shares to buy them back into his ISA. Mr H was warned doing so had capital gains tax implications, and he should seek specialist advice. Around this time the adviser's internal request that Mr H's recommendation report be escalated, was denied as there didn't appear to be a valid reason, but this wasn't fed back to Mr H.
- Investing the fund in an ISA appeared to conflict with Mr H's objective of releasing cash for home improvements, but in any event, the evidence suggested he'd used his ISA allowance for 2020/21, so didn't lose out in that regard from the delay.
- Mr H complained to the adviser on 4 April and was told his request had been escalated (due to Mr H needing to finance work on his house). This time the escalation was agreed, and the report was produced a week later. Once the report was finalised I thought Argentis acted fairly swiftly, and OMW had a ten-working-day timescale which was outside of their control.
- Argentis admitted it had focussed on other clients, the delay was mainly caused by pressure on the paraplanner to produce the report in time, Mr C had done what he could to progress things, but could've done more to keep Mr H informed.
- I acknowledged the proximity of the Easter public holidays (2 and 5 April) effectively making Thursday 1 April the last business day of the 2020/21 tax year. But Mr H made contact with Argentis at the end of January, so I didn't think his expectation the transaction should be completed before the end of the tax year was unreasonable, even if he didn't specifically mention it being imperative.
- In summary I thought Argentis had delayed things for Mr H, it wasn't fair that he'd been overlooked without managing his expectations, and the release of TFC and the fund switches on balance could have happened sooner than they did.
- But because I couldn't say for sure how long the process should have taken, given the complicating factors, I thought a timescale of eight weeks was a fair and reasonable outcome, based on what Mr H and his previous adviser suggested was usual for annual reviews and fund switches. Meaning Mr H would have received his TFC on 25 March 2021 and the fund switches completing on 1 April 2021, just within the 2020/21 tax year.
- I couldn't be sure if the fund switch taking place earlier would've benefitted Mr H. So to put things right, Argentis must carry out a loss calculation using those dates.

Argentis didn't respond to the provisional decision.

Mr H responded, accepting the outcome. He made the following points (in summary):

- The delay meant he missed out on the substantial post-COVID market rises in early 2021, and Argentis should have been able to meet customer demand during this period.
- The discussion about moving shares he held into a stocks and shares ISA was a side issue, and from memory not a service Argentis could help with.
- He believed the ISA rules permitted funds withdrawn during a year to be replaced so long as the annual subscription wasn't exceeded, allowing him to use the TFC to top up his cash ISA in 2020/21, with any excess held over to the following tax year.

Neither party challenged the assumption that Mr H was a basic rate tax-payer in retirement, so the redress will be calculated on that basis.

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 see no reason to depart from my provisional conclusions, which were that in the absence of Mr H being told the year end may cause a problem, eight weeks was a reasonable timescale within which his TFC and fund switches could have completed. So I think the TFC should have been released to Mr H on 25 March 2021, and the fund switches completed on 1 April 2021, within the 2020/21 tax year.

Putting things right

Fair compensation

My aim is that Mr H should be put as closely as possible into the position he would probably now be in if Argentis had dealt with the tax-free lump sum withdrawal and investment switches when it should have. So on 25 March and 1 April 2021 respectively.

What must Argentis do?

To compensate Mr H fairly, Argentis must:

- Compare the performance of Mr H's OMW pension with the notional value if the lump sum withdrawals and investment switches had taken place in line with the dates above. If the *actual value* is greater than the *fair value*, no compensation is payable.

If the *fair value* is greater than the *actual value* there is a loss and compensation is payable.

- If there is a loss, Argentis should pay into Mr H's pension plan to increase its value by the amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.
- If Argentis is unable to pay the compensation into Mr H's pension plan, it should pay that amount direct to him as cash. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid.

This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr H won't be able to reclaim any of the reduction after compensation is paid.

- The calculation should also reflect that Mr H crystallised £100,000 across both plans to release the tax-free lump sums (£12,500 from each plan).
- The *notional* allowance should be calculated using Mr H's actual or expected marginal rate of tax at his selected retirement age. It's reasonable to assume that Mr H is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr H would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.
- Pay Mr H the sum equivalent to 8% simple interest on each of the £12,500 tax-free withdrawals from the date they should've been paid (25 March 2021) to the dates they were paid (17 and 18 May 2021). See note below.
- Pay Mr H £500 for Inconvenience caused by chasing the adviser and the distress arising from the disruption to his plans and worry at the potential loss to his pension.
- Argentis should provide details of the calculations to Mr H in a clear, simple format.

Note: Income tax may be payable on any interest paid. If Argentis deducts income tax from the interest, it should tell Mr H how much has been taken off. Argentis should give Mr H a tax deduction certificate in respect of interest if he asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
OMW pension plan	Still exists and liquid	Notional value of OMW plan (or alternative as set out below)	25 March 2021 when funds should've been crystallised	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

Actual value

This means the actual amount payable from Mr H's OMW plans at the end date.

Fair value

This is what the pension plan would have been worth at the end date had the changes been implemented when they should.

Any additional sum(s) that Mr H paid into the pension plan should be added to the *fair value* calculation at the point it was actually paid in.

Any withdrawal(s) from the pension plan should be deducted from the fair value calculation at the point they were actually paid, so they cease to accrue any return in the calculation from that point on. If there is a large number of withdrawals to keep calculations simpler, I'll accept if Argentis totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

I've chosen this method of compensation because:

- Mr H wanted capital growth for his pension and was willing to accept some investment risk.
- If it's not possible to calculate a notional value for the OMW pension then I consider the below benchmark an appropriate alternative.
- The FTSE UK Private Investors Income Total Return index is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.
- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr H's circumstances and risk attitude.

My final decision

I uphold this complaint. Argentis Financial Planning Limited should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 12 April 2023.

Sarah Milne
Ombudsman