

The complaint

Ms M complains that she was given incorrect information by AFH Independent Financial Services Limited ('AFH'). She says this resulted in her taking advice from AFH, in relation to the potential transfer of benefits from her defined-benefit ('DB') occupational pension scheme, and incurring advice fees, which she wouldn't have done but for the incorrect information.

What happened

Ms M had deferred benefits in a DB scheme. The cash equivalent transfer value ('CETV') of these benefits was £608,858.25.

Ms M wanted to transfer these benefits to a self-invested personal pension ('SIPP'). She was put in contact with an adviser from AFH to discuss this, as the adviser was a friend of her partner.

Ms M says the adviser told her that advice was required but was a largely a formality. She says he explained that AFH's process was what it would first provide abridged advice, the outcome of which could be that it was either unclear if a transfer was suitable or AFH would not recommend a transfer. She could then take full advice. But even if that advice was not in line with what she wanted, she'd be able to proceed as an insistent client and complete that transfer.

I've seen a copy of an email from the adviser to Ms M on 10 June 2016, providing a link to a fact find for Ms M to complete. And information noted within the fact find refers to discussions with the adviser that took place prior to this email.

AFH sent Ms M fee agreements to be completed. For the abridged advice the fee was £400 plus VAT. This was signed by Ms M on 16 June 2021. AFH also sent Ms M a fee agreement for its full advice service. This said that the fee for that service was £15,000 plus VAT, but the amount already paid for the abridged advice would form part of this and be deducted. This was also signed by Ms M on 16 June 2021 – before abridged advice had been provided.

On 8 July 2021, AFH provided Ms M an abridged advice report. In short, this concluded that AFH had insufficient information to make a recommendation at that time.

AFH sent Ms M a full advice report on 3 August 2021. It recommended that Ms M make a partial transfer from her DB scheme, equivalent to £245,011.29, and retain the remainder as guaranteed benefits. It said it felt a partial transfer offered the "best of both worlds" as the remaining guaranteed pension plus Ms M's state pension entitlement would meet her income needs, with the transferred amount providing the flexibility she wanted.

Ms M still wanted to transfer the full value of her benefits from the DB scheme. From her earlier conversation she understood AFH could assist and process this, so she asked it to do so. AFH declined.

Ms M complained to AFH. She said, she'd been told by the adviser she'd be able to proceed on an insistent client basis and complete the transfer. And she said she wouldn't have begun the advice process at all were it not for this.

AFH said that the adviser had confirmed that he'd stated to Ms M that she'd be able to proceed on an insistent client basis, as this was his understanding. But this was incorrect. So, it agreed based on the discussions with the adviser Ms M had understood she would always be able to transfer and upheld her complaint. However, it said that it needed to consider that it had undertaken research and provided full advice. So, it proposed to reduce the fee for the full advice from £15,000 plus VAT to £6,000. This was because this represented roughly 40% of the initially agreed fee and AFH's recommendation had been that Ms M complete a partial transfer, for approximately 40% of the CETV.

Ms M referred her complaint to our service. She explained that she had since sought advice from another firm about a transfer, after confirming with it in advance that she could proceed on an insistent client basis, if necessary. That firm had processed the full transfer of her DB scheme benefits to a SIPP and charged for the service. She also said that the delay she'd incurred in transferring had impacted her plans, including moving house, and changes in market conditions had caused additional costs.

One of our Investigator's considered the complaint and felt it should be upheld. He noted that AFH had accepted it had made an error. And he didn't think Ms M would've agreed to proceed and receive advice from AFH were it not for this error. So, he recommended that AFH waive its full fee and pay £300 for the distress and inconvenience caused. He didn't though think it was fair to hold AFH liable for costs incurred as a result of Ms M having to alter her plans.

AFH did not accept the Investigator's opinion. As a result, the complaint has been passed to me to decide.

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.

AFH acknowledged in its final response that its adviser made an error. It said the adviser has confirmed he told Ms M that she'd be able to proceed on an insistent client basis, regardless of the outcome of the advice. But this was incorrect. AFH says it wasn't under any obligation to allow Ms M to go ahead as an insistent client. And I don't disagree with that. But AFH did provide Ms M with incorrect information.

As the parties agree that an error has been made, what is left for me to decide is what a fair way to address that is.

I think it is clear that Ms M wanted to transfer her DB scheme benefits in full to a SIPP. And that she'd made this decision before having taken any advice from AFH. The adviser confirmed that they'd discussed Ms M being able to proceed with such a transfer on an insistent client basis if needed, which I don't think would've been a topic of conversation had this not always been a genuine intention. And the fact that Ms M sought advice from another company, after AFH declined to process the full transfer, and has since made such a transfer, in my view indicates that this was always the purpose of her getting in touch with AFH.

I think it's likely that the incorrect information was provided to Ms M by AFH before she'd agreed to both the abridged and full advice fee agreements. I say this because, these

agreements were both signed on the same date, 16 June 2021. This was after discussions between Ms M and AFH's adviser, referenced in the fact find by date.

And I also think this incorrect information is what led Ms M to sign both of the fee agreements and agree to take advice from AFH. I think it's telling that both agreements were signed together before any advice had been provided. As I've said, I'm satisfied she'd been clear about her intentions and wanted to be sure she'd be able to transfer. And I think she was aware that she needed to take advice, at a cost. I don't think she'd have agreed to pay fees for a service, either for abridged but particularly for full advice, given the fee involved, had she known she may not be able to transfer in full as she intended. And so, if AFH had correctly informed her that there was the possibility she would not be able to proceed as an insistent client and achieve her aim, I think she'd have sought advice from a different company at that time, and not proceeded with the AFH advice process. And, while I acknowledge that the adviser was an acquaintance, I don't think that would've changed this or made her proceed and commit to paying fees when she might not have achieved her desired outcome.

AFH said in response to the Investigator's opinion that it thought the fact that Ms M had taken advice from another company showed that she'd always have taken advice. But that isn't in dispute. The value of Ms M's DB scheme benefits meant she was required to take advice before transferring them. And I'm satisfied transferring was always her intention. So, I agree she'd have always needed to take advice. But I don't agree that she'd have always taken this advice from AFH. Because, as I've said, if she'd known that AFH might not recommend a transfer *and* that she couldn't then proceed regardless, I don't think she'd have taken any advice from AFH.

Where an error has been made, our aim is to put a consumer, as far as possible, into the position they would've been in but for that error.

I'm satisfied Ms M wanted certainty that she'd be able to progress the full transfer of her benefits. So, if AFH hadn't incorrectly told Ms M she always had the option to proceed as an insistent client, I don't think she'd have agreed to proceed and receive advice from AFH. That, in my view, includes the abridged advice, as the incorrect information appears to have been given before that process was started. And that means she wouldn't have incurred any fees for advice from AFH. AFH argues Ms M received a service from it. But if no error had occurred, then advice would not have been provided. I accept that AFH provided a service. But this was only done as a consequence of its error, which isn't something Ms M is responsible for, so I don't agree it is fair to hold her responsible for any cost AFH incurred.

So, to put things right, AFH should waive its advice fee in full. For the avoidance of doubt this means Ms M is not responsible for any further payments and AFH should refund any payment she has already made – which I understand is most likely the £400 plus VAT for the abridged advice service – as this formed part of the total cost of the full advice and wouldn't otherwise have been incurred.

Our Investigator also recommended that AFH pay Ms M £300 for the distress and inconvenience caused. Ms M has explained that her plans were delayed because the advice process with AFH, which took a couple of months, was effectively wasted. And I agree that without the incorrect information, Ms M would've likely approached a different company sooner, potentially avoiding this delay. And I think this was delay would've been frustrating. In addition, finding out that the information she'd been given was incorrect, that she'd proceeded with advice on this basis and that AFH intended to hold her liable for the related fee was also likely to be upsetting for Ms M, as I think she was entitled to expect and trust that the adviser was aware of AFH's processes. So, in the circumstances, I agree that an award of £300 for the distress caused is fair.

I don't though think it'd be fair to hold AFH liable for additional costs Ms M has incurred in respect of her plans, including a house move, or the additional cost, over and above AFH's fees, for the advice she obtained from another company. I say this because advice would always have needed to be taken from another company. And AFH isn't responsible for a third-party company's fee structure. And although the delay was frustrating, I don't think costs incurred due to changes in market conditions could've reasonably been foreseen or are something that AFH can fairly be held responsible for here.

My final decision

For the reasons I've explained, I uphold Ms M's complaint.

To put things right I require AFH Independent Financial Services Limited to:

- Waive any outstanding fee for the DB transfer advice.
- Refund all payments Ms M has already made to it in respect of this advice.
- Pay Ms M £300 for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 5 April 2023.

Ben Stoker
Ombudsman