

The complaint

Mr B complains about poor service from Mark Tennant trading as Harvey Spencer Financial Planning (Harvey) that caused him financial loss.

What happened

Mr B said he wanted to transfer his defined benefit pension plan to a flexible drawn down arrangement. He then wanted to withdraw his 25% tax free cash to pay for his daughter's wedding and a house move. Harvey failed to provide advice and he had to pay for another cash equivalent transfer value (CETV) to be produced. He also withdrew money in a way that incurred a tax charge of £6,500. He wanted Harvey to pay for the additional CETV and the tax charge he could have avoided by taking tax free cash.

Harvey has not replied to comment on Mr B's complaint nor provided its file or comments to this service.

The investigator said Mr B contacted Harvey on 31 July 2020 to send on a CETV report from his pension scheme dated 6 July 2020. The transfer value was around £106,000. Mr B returned all papers to Harvey by 30 July 2020 and then had a zoom meeting with Harvey to provide further information. After asking further questions it was also agreed Mr B would ask for a CETV of another former employer's pension. This was sent on to Harvey on 29 September 2020. Mr B chased on 18 October as he had not received any advice and his CETV from the first scheme had now expired. He asked whether he should get an updated CETV and on 27 October Harvey confirmed that he should. When Mr B contacted his former employer's scheme he was told he was only entitled to one free CETV per year and would need to pay £250 plus VAT for an updated one, but did say he could return the form based on the old CETV but the amount in that CETV was no longer guaranteed. On 27 November 2020, Harvey confirmed a new CETV would be required which Mr B obtained and sent on to Harvey on 4 December 2020. He had still not received any advice by late January 2021 and chased Harvey again in early February 2021, but still didn't receive any reply from Harvey. Mr B complained in March 2021.

Mr B said that he needed money for a house move that took place in January 2021 and his daughter's wedding in December 2020. He took the money from another pension scheme. As he had already taken his tax-free cash from that scheme his withdrawal was subject to tax at 20%. He needed to take £32,5000 gross and paid tax of £6,500 to gain £26,000 net.

My provisional decision.

I issued a provisional decision in this case and said the following.

Mr B accepted that the summary set out by the investigator was accurate fair and reasonable, so I had not repeated it in detail here. Harvey had still not replied to comment on what this service had said. However having read the papers supplied by Mr B including email exchanges with Harvey, it was clear that he failed to respond to Mr B and provide the advice about the pension transfer he requested.

As I had concluded that Harvey failed to do what it said it would I could make and award for financial loss and distress and inconvenience.

It was clear that Mr B would not have requested a further CETV had Harvey not indicated he needed to. So I think that it is fair and reasonable that Harvey should pay the cost of obtaining this which was £300 plus interest at 8% per annum simple to reflect the loss of use of that money since it was paid.

I had also considered the tax charge which Mr B incurred to access his money from another pension scheme. However Mr B had a duty to mitigate and could have instructed another adviser when it was clear that Harvey were not responding. Further as Mr B had already taken his tax-free cash from that scheme he would always have been subject to tax at his marginal rate on further withdrawals. He also retained the ability to obtain tax free cash from the pension he wished to transfer. So I was not proposing an award for the amount of the tax charge.

I considered an award for distress and inconvenience. Such awards are to reflect the impact on Mr B and not to punish Harvey. It was clear that Harvey had failed to respond to Mr B either to say it couldn't or wouldn't advise on the transfer or to suggest a timescale. This absence of communication left Mr B in the dark. It is clear that Mr B was put to trouble in chasing Harvey and taking time to obtain a second CETV. He was also inconvenienced by needing to take money from another source as he didn't get the advice he needed from Harvey.

However it is possible that had Harvey provided advice it would not have advised him to transfer. I say that because it appears his old employer's scheme was a defined benefit scheme and in general the regulator's view is that it isn't in the best interests of members to transfer from a defined benefit to a defined contribution scheme. So it was always possible that Mr B would have needed to seek his money from another source.

The lack of communication from Harvey did mean that Mr B needed to consider other options. As he said he needed the money in January and the revised transfer value was provided in November, I can understand that he may not have had the luxury of much time to consider his options for other sources of money.

I thought the level of frustration and annoyance suffered by Mr B was more than might reasonably be expected from day to day life. The failure to respond went on for months which must have created some stress, as Mr B had to find other options to get the money he needed and in a relatively short timescale. I think the level of inconvenience must have been significant and meant Mr B was put to extra effort to sort this out. However I didn't think the impact caused substantial distress and inconvenience nor was it sustained and it did not seem to have had an impact on Mr B's health. On balance therefore I thought an award of £500 would be fair and reasonable in the circumstances.

I proposed to uphold this complaint and direct that Mark Tennant trading as Harvey Spencer Financial Planning should:-

1. Pay Mr B £300 (for the additional CETV report he needed to purchase) plus interest at the rate of 8% per annum simple from 2 December 2020 to the date of payment to him under this direction.
2. £500 for distress and inconvenience.

Neither Harvey or Mr B replied

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.

As neither party has made any further comment I have not changed my mind.

Putting things right

As I have not changed my mind I have not changed my proposed direction.

My final decision

I uphold this complaint and direct that Mark Tennant trading as Harvey Spencer Financial Planning should:-

1. Pay Mr B £300 (for the additional CETV report he needed to purchase) plus interest at the rate of 8% per annum simple from 2 December 2020 to the date of payment to him under this direction.
2. £500 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 25 November 2022.

Colette Bewley
Ombudsman