

The complaint

Mrs P wanted to transfer her occupational Defined Benefit (DB) pension scheme to a personal arrangement. She says that her advisers, WPS ADVISORY Ltd (WPS), caused delays meaning she missed her guarantee date, resulting in a lower transfer value. She would like WPS to make good any losses she experienced as a result, and to compensate her for the distress and inconvenience she experienced.

What happened

As both parties are in agreement on the main events, I don't propose to go into a full discussion of the timeline here. I think it is also worth pointing out that there has been no suggestion that Mrs P has any concerns over the actual advice to transfer her scheme to a personal arrangement, so I don't intend to go into that either.

Mrs P approached WPS for advice on her occupational scheme, having been introduced to them by the scheme trustees. Her transfer value was dated 12 February 2021 and on 18 February WPS wrote to her to let her know that they had her pension details and inviting her to get in touch to arrange an initial meeting. That meeting was held on 17 March, and in the meantime Mrs P completed her fact-finding forms to help the discussion.

Mrs P wanted to access £15,000 of the transfer value straight away, which she would use to clear a mortgage she had on an investment property, thus increasing her net disposable income. The rest of the fund would be left invested until she came to retire, at which time she would use it to pay her a regular income. She made it clear to the adviser at the outset that, having seen the transfer value fall already (from c. £116,000 in December 2020) she was keen to meet the expiry date of 12 May to avoid further falls.

After the meeting on 17 March there were follow-up emails discussing Mrs P's risk profile, which was agreed as 'Moderate' (or 3 out of 5) on 23 March.

There was no further contact until Mrs P received her advice pack which included the recommendation to transfer and related application forms, on 13 May. This pack instructed her to contact her adviser in the next 5-10 days to discuss the recommendation and to return the enclosed forms signed by one week before the expiry of the transfer value. However, the advice pack was not issued until the day after the transfer value had already expired so by then it was impossible to meet the deadline.

Mrs P met with a new adviser from WPS on 21 May, following which a formal complaint was raised because of the delays and the new adviser took over. A new transfer value would have to be calculated by the scheme as the original one had now expired.

This new transfer value was not received until 6 July. WPS had agreed to pay the fee to the scheme for the re-calculation. By 8 July Mrs P had returned all the new forms duly signed. The scheme confirmed on 20 July that they had paid the new transfer value to the receiving scheme (Royal London).

On 23 July WPS provided their final response to Mrs P's complaint. The business had

already agreed to make a payment into Mrs P's new pension scheme to make up for the lower transfer value after the recalculation. They said that it would not be possible to make any payment in respect of potential lost investment returns as it would not be possible to determine when the transfer value should have been invested. So instead of calculating any investment losses, they offered a payment of £250 to reflect the inconvenience.

Mrs P did not accept that offer and brought her case to us. Our investigator thought that the transfer should have completed on 20 April so the business should (in addition to making up the difference in transfer values) calculate whether there were any investment losses due to the delay and pay interest on the £15,000 because Mrs P would have accessed this amount earlier. The investigator also agreed with WPS's offer of £250 for the inconvenience caused.

WPS disagreed that 20 April was a realistic date, but otherwise accepted the investigator's findings. They proposed a date of 24 May as the date for calculating investment losses and interest.

Mrs P accepted neither the 24 May date nor the £250 for inconvenience. She wanted the business to calculate losses/interest from the earlier date, and to pay £1000 for inconvenience.

Since neither party fully accepted the investigator's proposal, the case was referred to me for a final decision. There is agreement that WPS was responsible for the delays, but not on the duration of those delays. So I have to decide what is a fair and reasonable date by which Mrs P could reasonably have expected her transfer to have completed, to be used as the basis for redress calculations. I also have to decide what I think is a fair and reasonable sum to compensate for the inconvenience and distress caused.

Provisional findings

I issued my provisional decision on 22 September 2022. It said:

I am providing this provisional decision as, based on everything I have seen thus far, I intend to depart from the investigator's recommendations.

Our investigator looked at how long the second attempt at the transfer took (8 weeks and 4 days from 21 May) when the new adviser took over. The investigator then calculated 4 weeks and 1 day from 21 June as the time taken for the transfer to complete once WPS had completed paperwork for the new transfer value. In both cases the time was measured up to 20 July, when the scheme confirmed that the funds had been sent to the personal pension provider.

The investigator then added the 4 weeks and 1 day to 22 March and calculated that the transfer should have completed by 20 April.

However, there are two stages to successfully completing a pension transfer. Firstly, the adviser firm needs to carry out their analysis and prepare a formal recommendation. Secondly, once the advice has been accepted, the various applications must be sent off and processed by the schemes and the money ultimately transferred. The 4 weeks and 1 day from 21 June covered only the second part of that process, so I don't think this was a realistic timeframe to use. I think that to be fair there needs to be an allowance for the time needed to carry out the analysis and prepare a recommendation.

So I think it is reasonable to say that the transfer should have taken 8 weeks and 4 days from 22 March because this was when the process actually began, and this is how long it actually took for both parts of the process to complete once the new adviser took over.

WPS took a slightly different approach. They said that 22 March was the date from which they were able to begin their advice process. This was expected to take two weeks, including checking and sign off. Once the advice was issued and forms returned there was a further 14 days for WPS's administration work plus 6 weeks for the scheme(s) to complete the transfer of funds, which was a total of 10 weeks. WPS arrived at a date the transfer should have completed of two calendar months from 22 March (22 May) but since this was a weekend they suggested 24 May, which was actually 9 weeks.

I don't agree with WPS' timescale which, although broadly reasonable, is an estimate of how long they expect it to take. Since we can work out how long the transfer actually did take, I think that this is more reliable than using an estimate, or an expected timescale.

Both parties agree that WPS was in a position to begin work on 22 March. Therefore I find that it was fair and reasonable to expect the transfer to have completed by a total of 8 weeks and 4 days from that date, or 21 May.

If we compare that date with 20 July, the date the transfer was actually confirmed as complete, then I find that the total delay caused was 8 weeks and 5 days.

For the reasons given above, I think that this timeline is fair and reasonable for the purposes of calculating potential investment losses and lost interest.

So I would propose upholding Mrs P's complaint, but with the timescales as described above.

In relation to what is a fair and reasonable payment for distress and inconvenience, I acknowledge that Mrs P made it clear from the outset that she was very keen to ensure that the transfer was completed before the value expired, and that WPS took her on as a client knowing this.

I also have to consider that, once WPS were made aware that the expiry date had been missed, and the new adviser took over, they acted to complete the transfer as quickly as possible from that point, and undertook to make a payment into Mrs P's pension to make up for the fall in transfer value.

I also have to take into account this service's approach for what is fair and reasonable to award in all the circumstances of the case. I think Mrs P has suffered more than the level of frustration and annoyance that might be expected and that the error has taken some effort to sort out. But I'm not persuaded the distress and inconvenience she suffered was such that it merits an award of anywhere near the £1,000 she is asking for.

I think that £250 is a reasonable sum taking into account all of the above.

Putting things right

My aim is that Mrs P should be put as closely as possible into the position she would probably now have been in had it not been for the delays. I think that the transfer would have been likely to have completed on 21 May.

What must WPS do?

To compensate Mrs P fairly, WPS must:

- *Compare the current value of Mrs P's Royal London pension (as at the date of my final decision and assuming the difference in transfer values has been paid into Mrs*

P's pension) with what the value would have been at the same date had the transfer completed on 21 May. If this results in a loss then then compensation is payable.

- If there is a loss, WPS should pay this into Mrs P's pension plan to increase its value by the amount of the compensation. 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 it is not possible to pay the compensation into Mrs P's pension, it should be paid directly to her. But had it been possible to pay into the pension, it would have provided a taxable income as well as tax free cash. Therefore the compensation should notionally allow for any income tax that would otherwise have been paid – the notional allowance should be calculated using Mrs P's actual or expected marginal rate of tax at her selected retirement age (which I will assume to be that of a basic rate taxpayer.)*
- WPS should add 8% per year simple interest to the compensation from the date of decision to the date of settlement (if compensation is not paid within 28 days of the business being notified of acceptance).*
- Pay interest on the £15,000 tax free cash 8% per annum for a period of 8 weeks and 5 days to reflect the period of delay during which she did not have access to her money.*
- Pay Mrs P £250 for the distress and inconvenience all the delays caused her.*

Response to my provisional decision

Neither party has offered any new information or arguments in response to my provisional decision.

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 no new information has been provided I see no reason to change my decision. So I remain of the view I set out in my provisional decision.

My final decision

For the reasons given above, I uphold this complaint. I require WPS ADVISORY Ltd to take the actions detailed in the "Putting things right" section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 24 November 2022.

Martin Catherwood
Ombudsman