

## The complaint

Mr W complains that Truscott Wealth Management Limited (TWM) caused a delay in payment of his tax free pension commencement lump sum (PCLS). He believes he received a lower PCLS as a result.

## What happened

Mr W approached TWM to discuss the possibility of transferring his Defined Benefit (DB) scheme pension funds to a personal pension. Mr W believed a transfer would be suitable for him as it would release a significant PCLS which would allow him to carry out home improvements and pay off his mortgage and some unsecured debts.

After gathering the appropriate information and receiving confirmation from Mr W that he wished to continue with the advice process, TWM set out its analysis and recommendation in a suitability report. It recommended that Mr W should transfer his DB fund, of £1,024,540 to a personal pension offered by a pension provider I'll call V.

On 28 February 2022 TWM instructed V to receive a pension transfer from Mr W's DB scheme. On 26 April 2022 Mr W's full DB value was transferred to V. V invested the full sum in the fund TWM had recommended without making a PCLS payment to Mr W. Mr W had expected to receive a PCLS payment of £230,000 (22.45% of the full transfer sum).

Mr W and TWM discussed the situation. Exactly what was said in their exchanges is disputed. But it's not disputed that, in the meantime, the value of Mr W's fund had dropped, which meant that he'd receive a smaller PCLS payment if he took it immediately. In a later email exchange TWM suggested that Mr W should wait for the markets to recover to their original level before Mr W took his PCLS payment. Mr W wasn't happy with that suggestion. He said the mistake was between TWM and V. TWM said it would look again at the situation in a week.

On 13 May 2022 TWM instructed V to pay Mr W a PCLS of £228,140, which – at that time – was 25% of his fund value which stood at £912,564. V processed the instruction. On 23 May 2022 it paid Mr W his PCLS of £228,140. At the time V crystallised the benefit the fund stood at £996,740.56.

The following day, 24 May 2022, Mr W emailed TWM to confirm he'd received the PCLS. But he believed he was out of pocket. He said:

*"The cost to me is £3820.00 due to the errors & mistakes that have been made during this process.*

*This is calculated as follows:*

*Original transfer value £1,024,558.07*

*Requested funds £ 230,000.00*

*Requested funds a percentage of the transfer value 22.45%*

*Value of transfer value at date shares were sold (18<sup>th</sup> May) £1,007,543*

*If the original percentage that was requested was applied to this amount ie £1,007,543 x 22.45% and taken as a cash free lump sum this would net £226,180.30*

*Effectively the £230,000 is now worth £226,180.30 a difference of £3819.70"*

TWM didn't uphold Mr W's complaint. It said the situation arose because there were two quotes on V's system; one which included paying PCLS and one which didn't. It said that V should have approached TWM for clarification of which was the correct quote but instead processed the wrong one. TWM added that if Mr W had waited for the markets to recover, as they later did, then he could have taken the full PCLS without any loss. It noted that Mr W had only paid off around 10% of his mortgage with his PCLS and not 100% which he'd told TWM he intended to do.

Mr W brought his complaint to us. One of our investigators looked into it. She requested further information from both TWM and V. Having done so she didn't think TWM had dealt with Mr W fairly. So she said TWM should put Mr W back into the position he would have been in if the PCLS had been correctly applied in April 2022. She said TWM should add simple interest to any financial loss payment at a rate of 8% a year. She also recommended that TWM pay Mr W £250 compensation to address the trouble and upset the matter had caused him.

TWM didn't agree with our investigator and made further representations. But, as she wasn't persuaded to change her assessment, the complaint's 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.

In bringing this complaint and in responding to it both Mr W and TWM have made a number of points. I've read everything on file. But in this decision I don't intend to address each point raised. Instead I will focus on what I see as being the key matters at the heart of Mr W's complaint and the reasons for my decision.

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

#### *Why wasn't the PCLS paid to Mr W initially?*

It's not in dispute that Mr W wanted and was expecting to receive a PCLS payment of £230,000. That was 22.45% of his DB scheme's full value. Indeed his desire for a PCLS payment was clearly the primary driver in him wanting to transfer his DB scheme funds to a personal pension. But V didn't pay that sum to him after it received the funds.

TWM says the "*blame*" for that lies with V. It said that were two quotes on V's system, one with PCLS and one without, but V chose the wrong one. As a result, V didn't pay any PCLS to Mr W initially. We made enquiries of V to establish what the process was; what actually happened and what should have happened.

V told us that advising firms like TWM can run as many quotes as they like for comparison purposes and those can be saved on their portal for the firm to return to at a later date if they

wish to. But the quotes themselves don't form the basis of an instruction to V. Instead, once the firm has the quote it wishes to progress, it needs to choose the "submit" option and once submitted V will process it. It said the quote TWM submitted – on 28 February 2022 – didn't request a PCLS. So V didn't pay one once the transfer was completed. V showed us evidence of the instruction that TWM submitted to it, which didn't show any PCLS. Instead it showed that 100% of Mr W's transfer sum was to be invested in the chosen fund. For contrast purposes V also showed us a sample submission which did include a PCLS request. And it's apparent that TWM's submission on 28 February 2022 didn't include a PCLS instruction..

TWM sent us two quotes with illustrations from V. One is dated 31 January 2022 and includes a PCLS sum of 25% of the fund value. The second is dated 3 February 2022, with a PCLS of £230,000 – 22.45% of the fund value. It says that is evidence it submitted the appropriate quote. It said the information V has shown us isn't evidence that the blame does not lie with V. But I'm not persuaded by TWM's representations here. It hasn't shown us any proof that it submitted a quote on 28 February 2022, the date that V received the instruction to transfer, which included a request for PCLS. In contrast V's been able to show us clear evidence that TWM made a submission without that instruction.

Having considered the matter very carefully I find V's evidence convincing. And I'm satisfied that the mistake here was TWM's alone. That is, when submitting the instruction to V, TWM omitted to include the PCLS request. I'm persuaded that, no matter how many *quotes* TWM ran on V's portal, it only actually submitted one instruction to V, which didn't include the PCLS request. As a result, when V received the funds, in line with the instruction received, it simply invested 100% of the transferred sum in the chosen fund and didn't make any PCLS payment to Mr W.

*Did Mr W lose out because of TWM's mistake?*

TWM said that if Mr W had simply waited for the markets to recover he wouldn't have suffered any financial loss at all. It said that by 9 June 2022 the markets had recovered to their previous level. So it doesn't think it is responsible for any losses.

While I understand TWM's point I don't think it would have been fair to insist that Mr W should have to wait in the hope that his fund recovered so that he didn't suffer a loss. I accept that TWM was confident that the markets would recover, but I don't see why Mr W should have shared its confidence. Mr W is not an experienced investor and while he no doubt hoped that his fund would recover, there was no reason for him to remain out of pocket in the meantime whilst waiting for that to happen.

Mr W had earmarked his PCLS for a number of purposes, including paying off unsecured debts, making home improvements and paying off his mortgage. As I've said above a key driver for him in transferring his DB scheme funds was to secure his PCLS, and that was what he expected to happen. The only reason he didn't receive those funds in April 2022 was because of TWM's error. It certainly was through no fault of his own. But TWM's mistake had effectively hamstrung him from spending the sums as he wished. And it's unlikely he would have had any certainty that the markets would fully recover. So it would seem grossly unfair to expect him to wait for an event that – as far as he was aware – might not happen or might not happen for a very long time, even if TWM was confident that it would. So I don't think it was reasonable for TWM to expect Mr W to be deprived of the opportunity to use his PCLS money simply because TWM had made a mistake.

TWM's said that Mr W didn't use the money to pay off all of his mortgage as he'd initially said he'd intended to, and instead only paid a fraction of it. But I think that's irrelevant. Once

received the money was Mr W's to spend as he wished and if his plans for those funds changed, that was his decision alone. I don't think it would be fair to deprive him of the opportunity to spend the money that he should have received while expecting him to wait for an event he couldn't be sure was going to happen.

V told us that if TWM had submitted an initial instruction which included a PCLS request then it would have crystallised the funds before taking an initial fee or investing the money. That ensures that the consumer receives the maximum PCLS available. So, had TWM submitted an immediate PCLS request, paying it would have been one of V's first actions on receipt of the transfer so it's likely Mr W would have received his PCLS without significant delay. But, because the markets had dropped by the time it processed the subsequent PCLS request, Mr W received a smaller sum, which was a larger percentage of his overall fund. It follows that I think Mr W suffered a loss because of TWM's mistake in submitting its instruction to V. So I don't think it dealt with him fairly and reasonably.

### **Putting things right**

As Mr W suffered a loss because of TWM's error, it needs to take the appropriate action to put him into the position he would have been in but for that mistake. So it needs to reconstruct the value of Mr W's pension as at the date the PCLS should have been paid correctly, which was on 26 April 2022. TWM needs to pay Mr W any shortfall in the PCLS sum he received in May 2022. And it should add simple interest to that amount at a rate of 8% a year from 26 April 2022 up to the date it makes payment to him.

Further, TWM's mistake and refusal to put things right has no doubt been a source of distress and inconvenience for Mr W. To address that I think it should pay him £250 compensation.

### **My final decision**

For the reasons given above I uphold this complaint. I require Truscott Wealth Management Limited to take the steps described under the heading of "putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 26 May 2023.

Joe Scott  
**Ombudsman**