

The complaint

Mr S complains that Scottish Widows Limited trading as Clerical Medical failed to provide his financial advisor with information relating to the transfer of his pension savings in a timely manner.

What happened

I issued a provisional decision on this complaint in December 2022. In that decision I explained why I thought the complaint should be upheld. Both parties have received a copy of the provisional decision but, for completeness and so those findings form part of this final decision, I include some extracts from it below. In my decision I said;

Mr S holds pension savings with Clerical Medical. Those pension savings are held in a Section 32 buy out plan that arose from a transfer of pension benefits in 1991. Those pension benefits comprised an entitlement to a guaranteed minimum pension ("GMP") that would be paid to Mr S when he reached age 65.

Mr S has a serious health condition. In late 2021 he asked Clerical Medical for information about the value of his pension savings. And in February 2022 Clerical Medical received a request, containing Mr S's authority, to provide information about his pension plan and the value of his benefits to a financial advice firm.

As I will explain later in this decision, the calculation of a transfer value for Mr S's pension savings has some complexity. So, it took some time for Clerical Medical to respond to the request for information from the financial advisor. It provided an initial response in May 2022. But it wasn't until August 2022 that it confirmed the information it had previously provided was accurate. And the transfer value it ultimately quoted was much lower than had been notified to Mr S earlier in the year. Clerical Medical accepts that the service it provided at that time was well below its normal standards.

In order to put things right, Clerical Medical made an offer to Mr S. It said it had paid him £1,500 by way of an apology for the poor service he had received. And it said that, if he completed the transfer of his pension benefits within 30 days, it would backdate the transfer value to 29 March 2022 – that being the date at which it thought Mr S's transfer might reasonably have completed had nothing gone wrong.

Mr S didn't accept Clerical Medical's offer and asked us to continue looking at his complaint. And more recently the financial advice firm told Mr S that it had decided it could no longer assist him with the transfer since the value of his pension benefits was below its minimum threshold. Mr S has appointed a new advisor firm, but his pension savings still remain with Clerical Medical.

I think it would first be helpful to set out my understanding of the nature of Mr S's pension savings, and how the transfer value is derived. I think a lack of understanding of that has led to some of the problems that underlie this complaint.

Mr S's pension savings have arisen from a time when he was a member of an occupational pension scheme, and was contracted out of the state second pension. As a result his employer paid lower national insurance contributions. But in return it offered to provide him with a guaranteed pension benefit when he reached state retirement age. This is known as a guaranteed minimum pension ("GMP").

In 1991 Clerical Medical took on that responsibility as a result of the transfer of Mr S's pension savings to its pension plan. So, when Mr S reaches state retirement age, Clerical Medical will be required to pay him a specified amount of pension income each month.

Mr S's pension savings with Clerical Medical are relatively modest and have an actual value of just under £12,000. But they benefit from the valuable guarantee that I've described above, and Clerical Medical would be required to provide a significant enhancement to those benefits, when Mr S reaches state retirement age, to ensure the correct GMP is paid.

However, under the terms and conditions of the pension plan, Mr S can also benefit from that guarantee if he chooses to move his pension savings to another provider at an earlier date. Clerical Medical would calculate what the equivalent current actuarial cost of providing those benefits would be at the date of transfer. But that cost would have little relation to the current value of Mr S's pension savings. It would purely be a result of the current costs of annuities, and expected changes to those rates, combined with expected investment performance in the time to Mr S reaching state retirement age. So changes in the market landscape can have, sometimes significant, impacts on the transfer value Clerical Medical is required to offer to Mr S.

When Mr S first asked Clerical Medical for details of his pension transfer value, in late 2021, he says he received an estimate of around £98,000. But the value that Clerical Medical provided in August 2022 when it had finished its further checks, and started to look into Mr S's complaint had fallen to just over £69,000. Whilst I have no reason to doubt the accuracy of those calculations, and that they fairly reflect the cost at that time of providing the GMP benefits, I can understand how disappointing the fall in value was for Mr S.

As I said earlier, Mr S is suffering from a serious illness that might limit the length of his life. So, his reason for transferring his pension savings, is to allow him to take advantage of them now, rather than waiting until he reaches state pension age. Whilst each of the transfer values that Clerical Medical has quoted would be expected to allow Mr S to purchase the GMP benefits once he reached state retirement age, their present cash value to him was markedly different.

The benefits that Mr S would be giving up were guaranteed. And the value of those pension benefits exceeded £30,000. So the relevant legislation required Mr S to take independent financial advice before Clerical Medical could agree to the transfer. So Mr S engaged an appropriate firm to provide him with that advice. I can see that firm made a number of requests of Clerical Medical for information that were not responded to in a timely manner.

Clerical Medical accepts that it failed to deal with Mr S's information requests as quickly as it should have. It has considered that its provision of information is only the first step of a transfer process – Mr S's advisor would then need to analyse that information before discussing and agreeing a recommended course of action with Mr S. So Clerical Medical has suggested that it would have been reasonable to expect Mr S to have been in a position to make his transfer by 29 March 2022 if

nothing had gone wrong. That date seems fair to me, and appears to have been accepted by Mr S. Clerical Medical has calculated that the transfer value it would have offered to Mr S at that date would have been a little over £87,000.

But, more recently, Clerical Medical has pointed out that Mr S's financial advisor had told him that it is no longer willing to advise him on this transfer. It said that the amount being transferred fell below its minimum transfer threshold of £100,000. So Clerical Medical says that it no longer thinks the 29 March date would have been achievable.

I've thought carefully about that argument and reviewed some of the correspondence between Mr S and his former financial advisor. It seems to me that Mr S was initially given no indication that the advisor would be unwilling to provide him with its services. It appears that decision was only made following the extensive delays to the process and the difficulties getting the required information from Clerical Medical. So, on balance, I think that the advice process would have completed had Clerical Medical not caused any delays.

Mr S has now engaged a new advisor and wants to take advantage of the offer Clerical Medical made to him to backdate the transfer value. It seems that recent market changes have seen the transfer value fall even further than it had earlier in the year. Clerical Medical has said that it thinks it unfair that Mr S should be provided with an open-ended guarantee to his transfer value, hence the reason it applied a 30-day limit when it made its original offer.

The offer that Clerical Medical made to Mr S was after he had first brought his complaint to us – but before it had been considered by our investigator. And around the time that offer was made, Mr S needed to find a new financial advisor. So I don't think it was unreasonable that he needed some additional time both to await an answer from us, and to restart the advice process. So I don't think it is fair to say that Clerical Medical's offer should be considered to have lapsed.

But, neither do I think it is reasonable to expect Clerical Medical to extend an open-ended offer to Mr S. That wouldn't be the case if he had requested a transfer value in the normal course of events – those quotations are, in my experience, generally only guaranteed for a fixed period of time. So I think a similar restriction should be included as part of the redress I intend to direct here. That will allow Mr S time to complete a new advice process, but also give some certainty to Clerical Medical about its future liability for any compensation.

There is no doubt that these delays will have caused significant distress and inconvenience to Mr S, at a time when he appears to have concerns over his long-term health. I have seen that Clerical Medical has paid him £1,500 to reflect that distress and inconvenience. After considering all the circumstances here I think that payment is fair and reasonable and in line with what I would recommend. So I don't think Clerical Medical needs to pay any further compensation in relation to the distress and inconvenience that Mr S has been caused.

I invited both parties to provide us with any further comments or evidence in response to my provisional decision. Mr S has said that he accepts my findings and hasn't provided us with anything further. Clerical Medical doesn't agree with my provisional decision. Although here I am only summarising what Clerical Medical has said I want to confirm that I have read, and carefully considered, the entire response.

Clerical Medical says that Mr S's financial advisor withdrew from the advice process once it determined that his pension savings fell below its normal advice threshold of £100,000. It says that, regardless of any delays it caused, the financial advisor wouldn't have been able to assist Mr S due to his pension savings being below that limit. It says that Clerical Medical cannot be held liable for the financial advisor's failure to disclose the advice limit to Mr S. So it doesn't agree that it is fair to be asked to honour a quotation that could never have been accepted in time.

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 set out in my provisional decision, in deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mr S and by Clerical Medical. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

The additional evidence from Clerical Medical hasn't caused me to change my mind on the outcome of this complaint. But I would like to comment further on the matters that have been raised.

As I explained in my provisional decision I have reviewed some of the correspondence between Mr S and his former financial advisor. Clerical Medical has placed a great deal of weight in its response to my provisional decision on the fact that it thinks the financial advisor would have been unable, or unwilling, to advise Mr S on the transfer regardless of its delays. Based on the evidence I have seen I do not share that conclusion.

There is no disagreement that, generally, the financial advisor says it would not accept clients with pension savings of less than £100,000. But that seems to me to be entirely a commercial decision – not one forced on the firm by regulations or legislation. So the firm would be entirely able to accept clients with pension savings valued at less than its normal threshold if it wished to.

And that is what I think happened in this case. It is clear that the financial advisor initially continued to provide advice to Mr S when it was aware that his pension savings were less than its normal threshold. In fact, from the information Scottish Widows has provided in its response to my provisional decision, Mr S's pension savings were always below the financial advisor's threshold. So I cannot agree that the financial advisor wouldn't have provided advice to Mr S had nothing gone wrong.

As I said in my provisional decision the financial advisor made a number of requests to Clerical Medical for information about Mr S's pensions savings. Those requests were only partially answered, or ignored altogether. I think it was at that point that the financial advisor firm took the commercial decision that its costs for the work it was being asked to perform would outweigh the fees it would receive for providing advice to Mr S based on the value of his pension savings. I think it most likely that, had Clerical Medical answered the queries efficiently, the financial advisor firm would have continued with its advice process.

So I think that the delays faced by Mr S in needing to appoint a new financial advisor were entirely as a result of the failures of Clerical Medical. I don't think that the falling value of his pension savings would have impacted his relationship with the initial financial advisor had nothing gone wrong. So I don't think Mr S should lose out as a result of the delays, and the need to identify and appoint a new financial advisor.

So, as I set out in my provisional decision, I don't think it is fair to say that Clerical Medical's offer should be considered to have lapsed. And as before, neither do I think it is reasonable to expect Clerical Medical to extend an open-ended offer to Mr S. That wouldn't be the case if he had requested a transfer value in the normal course of events – those quotations are, in my experience, generally only guaranteed for a fixed period of time. So I still think a similar restriction should be included as part of the redress I am directing here. That will allow Mr S time to complete a new advice process, but also give some certainty to Clerical Medical about its future liability for any compensation.

Putting things right

If Clerical Medical hadn't unreasonably delayed the information it needed to provide to Mr S and his financial advisor about the transfer, Mr S would have been in a position to proceed by 29 March 2022.

I direct Clerical Medical to provide Mr S with a transfer quotation based on the transfer value of his pension savings as at that date. It should also provide, promptly, any other reasonable information Mr S's new financial advisor requires in order to provide the necessary transfer advice to him. The quotation should remain open to Mr S to accept for a period of 90 days from the date it is issued to him following his acceptance of this final decision.

My final decision

My final decision is that I uphold Mr S's complaint and direct Scottish Widows Limited trading as Clerical Medical to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 24 February 2023.

Paul Reilly
Ombudsman