

## The complaint

Mr C has complained that Female Financial Management Limited ('FFM') failed to carry out a transfer of his pension benefits in 2020.

## What happened

I have previously issued a provisional decision regarding this complaint. The following represents excerpts from my provisional decision, outlining the background to this complaint and my provisional findings, and forms part of this final decision:

*"FFM has stated that it meets Mr C once a year in February to review his pension arrangements, and also an ISA he holds. Mr C has a personal pension with provider A that was arranged by FFM. He also has personal pensions with two other providers (who I will refer to as provider X and provider Y). FFM states that it is only paid for reviewing the ISA, so its review of the pension plans is free of charge.*

*In February 2020, FFM emailed Mr C a review pack, within which it commented that it did not consider providers X and Y had a good choice of investment funds when compared to modern platforms. In March 2020, Mr C attended FFM's offices to discuss fund performance in more detail. FFM told him that he could transfer his benefits from providers X and Y to get better fund choice, but that costs would probably be higher. To meet its regulatory obligations, FFM said that it would need to issue a report comparing the costs of such a transfer.*

*Some of the circumstances relating to the March 2020 meeting are disputed between the parties. Mr C says that he signed documents for the transfer at the meeting. FFM was then to send him an illustration relating to the transfer by email which he could approve by return of email. Mr C says he emailed FFM on 10 March and said he was happy with its illustration, and wanted to proceed with the transfer.*

*In contrast, FFM has stated that it didn't ask Mr C to sign any declaration relating to the transfer at the meeting as it didn't know if the transfer would go ahead.*

*FFM told Mr C that it would not charge for the transfer, but it would make a charge of 0.5% pa for ongoing advice. FFM says that it took time to obtain figures from providers X and Y, and so it didn't produce its transfer report until July 2020. This report recommended that Mr C transfer his benefits held with providers X and Y into a new self-invested personal pension ('SIPP') on a platform with a "diversified model portfolio". However, FFM did not send Mr C the report at the time it was written. Instead, it sent the July 2020 report in February 2021.*

*In September 2020, Mr C requested up to date pension valuations, and these were provided by FFM. These showed that the policies with providers X and Y remained in place.*

*When preparing its February 2021 review, FFM noted that the policies remained with providers X and Y. It has stated that at this time, it apologised to Mr C about this, but it only did so because it did not want to place an onus on its client for not instructing the transfer to go ahead.*

*Mr C complained to FFM that the transfer had not been carried out. FFM did not agree that it had been at fault for this. Mr C asked that the transfer be arranged now, but FFM stated that in the circumstances of a formal complaint having been made, it was not appropriate for it to arrange the transfer. Unhappy with its stance, Mr C brought a complaint to this office.*

*Our investigator upheld this complaint. His view was that Mr C had instructed FFM to arrange the transfer in March 2020. He requested that FFM pay redress for any financial loss caused by the failure to transfer the benefits in March 2020, plus interest to reflect trouble and upset caused. He also asked that FFM now complete the transfer for Mr C.*

*FFM did not agree with the investigator's findings. It stated that it only agrees to transact business after a suitability report has been completed that considers the advantages and disadvantages of the proposed action. FFM also stated that a fee arrangement signed by the customer would need to be completed before a transaction could take place. Although it accepted that it was verbally agreed for this transfer that the fee would be paid via an ongoing charge of 0.5% pa, it said that Mr C never signed up to this arrangement. It also stated that until Mr C had seen the suitability report and signed to agree to its recommendation, the transfer could not take place.*

*FFM reiterated that the suitability report was not prepared until July 2020. It stated that it told Mr C in March 2020 that a transfer could not occur before the report was issued. FFM commented that 'older' providers such as X and Y can be slow at providing information required for a suitability report, and this was why the report was delayed.*

*FFM did accept that there had been a delay in sending the July 2020 report to Mr C, as it had not been issued to him until February 2021. It stated that this was the result of pressures caused by the Covid-19 pandemic. FFM also said that because it had not heard further from Mr C about the proposed transfer, it prioritised other work, assuming he did not want the transfer to go ahead.*

*FFM highlighted that when it sent up to date valuations to Mr C of his assets in September 2020, its covering email acknowledged that a report recommending the transfer of the benefits with providers X and Y was overdue. It stated that Mr C's response was to thank FFM for the valuations, and at the same time he had not chased it for an update on the transfer. FFM stated that as a consequence, it concluded that Mr C might not be interested in the transfer, and so it was not prioritised (and was later missed).*

*As a result of an acceptance on FFM's part that it was to some extent responsible for the delayed transfer, within its response to the investigator's view, it offered Mr C £8,197.50 compensation. It stated that this represented half of the loss it calculated had been suffered, and was based on prices applicable on 28 July 2020 (the date of the suitability report) compared to prices on 18 February 2021 (which I understand is when this report was sent to Mr C).*

*Mr C did not accept FFM's offer. He commented that he has had annual meetings with FFM for a number of years, and on some occasions it recommends switching funds. Mr C said that he sometimes agrees the transfers at the meeting, and in those situations he signs the paperwork upfront (as recommended by FFM) so that it doesn't need to be completed at a later date.*

*During the March 2020 meeting, Mr C said that when it recommended the transfer to the SIPP, FFM suggested he also sign the necessary paperwork at the meeting, subject to an email confirmation that Mr C would need to send once he'd read the illustrations. Having sent that email confirmation, Mr C understood that the transfer would be carried out.*

*Mr C highlighted that FFM recommended the transfer. He questioned whether FFM had provided evidence to show that the delayed production of the suitability report was the result of providers X or Y being slow to supply information, as FFM had suggested. Mr C also commented that when in February 2021 FFM acknowledged the transfer had not been enacted, its email stated that the transfer had previously been agreed between FFM and Mr C. The email did not suggest that FFM was awaiting confirmation from Mr C that the transfer should proceed.*

*With regard to the September 2020 valuation that showed some of his pension benefits still being held by providers X and Y, Mr C stated that he requested this information because he was selling his house and wanted to gain an overall picture of his finances. For this reason, he did not notice the details of which providers his benefits were with. Mr C also questioned why FFM's September 2020 email apologised for the delay in forwarding the suitability report but did not send it, bearing in mind that it was dated as having been written in July 2020. That aside, Mr C said that in September 2020 he would have viewed any suitability report as simply being a formality, on the basis that he believed he had signed all necessary paperwork to request the transfer.*

*Mr C also questioned why FFM had chosen to make its offer based on loss calculations from July 2020 to February 2021. He asked that an ombudsman determine the appropriate date range for any loss calculation carried out.*

*I asked FFM for further comments in response to Mr C's description of how annual review meetings were conducted, and in particular what process was followed if a recommendation was made to switch investment funds. FFM responded that it considered Mr C was referring to lump sum contributions he would make towards the end of a tax year. Because the review meetings were in February, there was limited time to make these new contributions. FFM stated that if Mr C had missed the deadline to pay premiums to his company scheme before the tax year end, it would arrange for a premium to be paid into the policy he has with provider A. But because this timescale was tight, FFM would ask Mr C to sign the top up application form, and the suitability report would be provided later.*

*FFM stated that in contrast, following its recommendation in the March 2020 meeting to transfer from providers X and Y, it did not ask Mr C to sign the application forms before receiving the suitability report. Instead FFM stated it explained to Mr C that the regulator required a cost comparison for the transfer to be carried out before proceeding.*

*FFM reiterated that Mr C did not query why the September 2020 valuation showed benefits still held with providers X and Y. It also provided some investment performance figures comparing the funds held with providers X and Y to those which would have been invested into under the new SIPP recommended for the transfers. FFM has commented that this shows that relative performance of funds varies according to the time period which is being considered.*

*This complaint has now come to me to make a determination on its merits.*

### **What I've provisionally 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.*

*The crux of this complaint relates to Mr C's assertion that he believed in March 2020 that he had provided FFM with his authority to transfer his benefits held with providers X and Y into*

*a SIPP, where investment was to be made into an agreed model portfolio. FFM's view is that the transfers had not been authorised by Mr C, and that is why they did not go ahead.*

*However, FFM has accepted that it was responsible for the delay in sending the July 2020 suitability report to Mr C, as this was not forwarded to him until February 2021. It has made an offer of compensation for the period from July 2020 to February 2021, offering 50% of the loss it has identified.*

*With regard to the suitability of the advice FFM provided to transfer from providers X and Y, FFM's July 2020 report provided its reasons for this recommendation. My understanding is that this report would have broadly covered the ground that was discussed by Mr C and FFM in the March 2020 meeting, albeit the report contained updated pension valuations, and also included a comparison of the charges between the existing schemes and the new SIPP.*

*In summary, FFM recommended the transfers because it stated the proposed investments in the SIPP better matched Mr C's attitude to investment risk. It also considered the new SIPP provided Mr C with a much greater choice of funds to invest in, and that it offered greater flexibility than the existing pension schemes. Although charges were to be higher under the SIPP, FFM concluded that the additional investment returns required to offset these were achievable, and again this better matched Mr C's risk tolerance.*

*I understand that Mr C agrees that the transfers into the SIPP were in line with his financial objectives. As the parties are in agreement that the transfers were suitable, I will not consider this issue further. The key matters for me to decide are whether FFM was at fault for the transfers not taking place, and whether this has caused Mr C a financial loss.*

*Mr C has provided a detailed explanation of the meeting that took place in March 2020. There is much about this meeting where the parties' recollections are similar. The main point of discussion was about the potential transfer of benefits from providers X and Y, and it was agreed where these funds could be invested. However, Mr C states that when he left the meeting, he understood that he had signed documents authorising the transfer, and that the only outstanding issue was for FFM to provide illustrations to him. He says that it was agreed that he could 'approve' the illustrations by return of email.*

*In contrast FFM states that during the meeting, it explained to Mr C that it would need to provide him with a suitability report before the transfers could go ahead. Amongst other things, this report needed to compare the costs of leaving the funds where they were to the costs applicable in the new SIPP.*

*Mr C has provided some email communication he had with FFM in March 2020. As Mr C has explained, emails he received from FFM were encrypted, and he is no longer able to obtain the encryption key for them. This has limited his ability to provide full email correspondence between him and FFM from March 2020.*

*However, Mr C has provided an email that I can see was sent to him from FFM on 10 March 2020, entitled 'Funds'. The content is encrypted, so I cannot know exactly what was contained within the email. But I note that the July 2020 suitability report confirms that the meeting where the transfers were discussed occurred on 4 March, and I consider it reasonable to conclude that the email sent on 10 March related to that meeting.*

*Mr C has also provided an email that he sent to FFM. He has referred to it being sent on 10 March, but it appears to have been sent on 11 March 2020. This stated: "I am happy with the illustration in your message dated Date: Tue, 10 Mar 2020, 17:49 – please proceed." FFM appears to have responded "Thanks [Mr C], Will do".*

*In its explanation about why it did not issue its July 2020 suitability report to Mr C until February 2021, FFM has said that it was of the opinion that Mr C “may have lost interest in the transfer” and so the report was not prioritised. However, on balance my view is that Mr C’s email in March 2020 was an instruction from him to FFM to carry out the proposed transfers. As a result, having received Mr C’s email, the onus fell on FFM to arrange the transfers in an expeditious manner.*

*I accept this may have required FFM to arrange for further documentation to have been completed and signed by Mr C. But I consider from 11 March 2020, FFM should have been carrying out the actions necessary to arrange the transfers. Instead, it appears that FFM did not take any such actions. And even when it produced a suitability report about the proposed transfers in July 2020, it did not send this to Mr C until February 2021.*

*FFM has highlighted that Mr C did not question the valuation he received in September 2020 that showed he still held pension benefits with providers X and Y. FFM’s covering email at this time also apologised for the delay in sending the suitability report about the transfers to Mr C.*

*I have thought carefully about whether this correspondence should reasonably have alerted Mr C to the fact that the transfers had not taken place. Mr C has explained that he requested the valuations because he was selling his house, and wanted a better picture of his overall financial situation. In seeking that overall picture, he did not pick up on the mention of benefits still being held with providers X and Y. Mr C has also said that he viewed the suitability report as being a simple formality around the transfers, and understood that he had already done all he needed to effect the transfers. Overall, having considered the comments Mr C has made, my view is that it is not reasonable to have expected Mr C to have noticed the failure of FFM to arrange the transfer of his benefits when it sent him the September 2020 valuations.*

*My conclusion is that from around 11 March 2020, when Mr C confirmed to FFM that he wanted to proceed with the transfer of his benefits from providers X and Y into a new SIPP, FFM should have been taking the necessary actions to arrange those transfers. It was reasonable for Mr C to believe from this point that FFM was carrying out those actions. In reality, it seems that FFM was not taking those actions. My view is that, through what appears to be an oversight on FFM’s part, it delayed the transfers that Mr C wanted to enact.*

*I am mindful that it is likely it would have taken some weeks to complete the transfers. I say that because FFM would have needed to arrange for the relevant transfer documentation to have been completed for both providers X and Y, and would have needed to set up the new receiving SIPP. FFM has stated that the reason the suitability report was not produced until 28 July 2020 was because there was a long delay obtaining documentation from one of the existing providers. It has indicated that this provider explained its administration was delayed due to the pandemic, although I note that FFM has not provided any copies of correspondence between it and the provider that evidences this was the case.*

*I cannot say for certain how long the transfers to the new SIPP would have taken if FFM had started the process to arrange these from around mid-March 2020. However, I have taken into account that this date coincided with the start of the Covid pandemic, and this might reasonably have impacted on the timescales taken to arrange the transfers and set up the new SIPP. Overall, in assessing whether FFM’s failure to arrange the transfers has caused Mr C a financial loss, I consider it reasonable to base the loss calculations on the assumption that an expeditiously arranged transfer of benefits would have resulted in the new SIPP investments being put into force around mid-June 2020. That being the case, my current view is that the loss calculation that FFM should carry out should be based on investment of the transfers in the model portfolio in the new SIPP on 15 June 2020.”*

## **Responses to my provisional decision**

Mr C's comments related for the most part to the methodology I had outlined to calculate any compensation that was due. He questioned whether it would be advisable for my decision to say that FFM needs to pay any compensation due as soon as is practically possible.

Mr C also confirmed his current salary, and explained that he pays into pension arrangements the maximum contribution that is permitted in order to obtain tax relief. Mr C asked whether any redress amount due would be considered part of this annual contribution limit. If so, and compensation due had to be paid to him as a cash payment, Mr C commented that, had the transfer gone ahead, this amount would have benefited from the preferential tax treatment available to monies held within a pension fund. Mr C highlighted that my redress methodology did not take this into account. He also asked if any compensation payment as cash would be subject to income tax.

Mr C commented about the fees that he is charged by FFM, which he said are either directly paid by him, or are paid via the policy providers. He said that FFM has stopped reviewing any of his finances, and he is concerned that he should have been advised to change funds due to possible underperformance. He asked that either all of his funds be reviewed, and he should receive compensation for those which should have had their investments switched, or that all commission and fees that FFM has received since this dispute started should be paid to him, because he has not received the service they cover. In terms of the redress calculation I proposed, he asked that the 0.5% pa charge for ongoing advice that I included should be dispensed with, again because he has not received ongoing advice.

In terms of the £150 compensation amount that I proposed for distress and inconvenience, Mr C asked that I reconsider this, taking into account the amount of time he has spent dealing with this complaint, and his effective hourly rate from his employment.

On the merits of the case, FFM reiterated earlier comments made that because it had not heard further from Mr C about the transfer after contact in March 2020, and had provided a statement showing the original policies were still in force, it believed the transfer was a low priority for him. It stated that customers sometimes choose not to go ahead with a transfer when they see increases in charges quantified.

FFM also commented that because the transfer had not been actioned, Mr C had not received policy documents and related information from the new provider. As a result, it questioned why Mr C didn't contact it to enquire why he hadn't received such documentation, bearing in mind that even simple pension transactions are followed by written paperwork confirming alterations which have been made.

In the course of responding to my provisional decision, FFM obtained information as it sought to calculate whether not transferring the pension benefits had caused Mr C any financial loss. FFM's calculation indicates that Mr C is in fact around £28,000 better off as a result of his benefits remaining with providers X and Y.

## **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.

With regard to Mr C's request regarding how soon any compensation due should be paid, when making an award for compensation, I would expect any sum due to be paid by a business within a reasonable timescale. In the redress that I outlined in my provisional

decision, I stated that FFM would need to add interest to compensation due if not paid within 56 days of it receiving Mr C's acceptance of my decision. I still consider this to be a reasonable way to ensure that Mr C is not disadvantaged if the payment of any compensation due is delayed beyond an acceptable timescale.

In terms of the tax treatment of compensation for a dispute such as this one, my understanding is that this is exempt from income tax. Regarding how a compensation payment would be considered if paid into a pension plan, this would be included in the total annual allowance limit that Mr C is able to pay into pension arrangements in order to obtain tax relief. As Mr C has explained that each year he already utilises the full annual allowance, any compensation due in this case will need to be made as a cash payment to Mr C.

I acknowledge Mr C's comments that receiving a cash payment that he cannot invest within a pension wrapper potentially results in this amount not benefiting from tax efficient growth. My aim when awarding compensation is, as far as it's possible, to place a consumer back in the financial position they would have been in, but for a business' mistake. But there are barriers around pension plans that add restrictions when attempting to do this. If FFM's error has caused Mr C a loss, he will be able to explore any other tax efficient ways of investing the compensation due. Overall, although I have taken into account Mr C's comments on this subject, I consider the redress method that I have proposed remains fair.

With regard to Mr C's comments about FFM's fees, the complaint brought to this service related to the failure of FFM to arrange the transfer of his benefits from providers X and Y. I appreciate that Mr C is now dissatisfied with what he considers to be an absence of financial reviews from FFM, and on that basis, he has asked that he be paid fees FFM has received. As this relates to a newer concern that did not form the basis of Mr C's original complaint, if he wishes to pursue this matter further, he will need to address this in the first instance to FFM directly. If he is unhappy with FFM's response, Mr C may be able to bring a further complaint to this service.

In terms of the 0.5% pa fee included in my proposed redress calculation, this was intended to reflect the original arrangement that Mr C and FFM had regarding fees, had the transfer taken place in 2020. As previously explained, my intention as far as it is reasonably possible to do is to place Mr C back into the position he would have been in if FFM had not been at fault. In order to do so, my view remains that the loss calculation is able to take into account the 0.5% pa charge when calculating the notional value the new SIPP would now have had, as this charge was part of the transfer arrangement discussed in 2020.

Mr C has asked me to revisit my proposed award for distress and inconvenience caused of £150. Although he has confirmed his hourly employment rate, this service does not generally make awards for inconvenience based on someone's professional hourly rate. Mr C has undoubtedly in my view been caused inconvenience by FFM's errors, but this is in his personal capacity when dealing with his own pension arrangements.

In making an award under this heading, I am mindful of the extent of the difficulties that Mr C was caused by FFM's failure to transfer his pension benefits, separate from any actual financial loss that FFM may have caused. Taking into account awards made on cases with similar circumstances, my view remains that it is appropriate that FFM pay Mr C £150 compensation to reflect the problems its failure to arrange the transfers caused him.

FFM has highlighted that customers sometimes show an interest in carrying out a financial transaction but then choose not to do so. It has stated it concluded that, because Mr C had not contacted it further after March 2020 about the proposed transfer, it thought this was a low priority for him. I note what FFM has said, but I'm mindful that it still produced a suitability report about the transfer in July 2020. This indicates to me that FFM considered at

the time that Mr C likely accepted its recommendation that the transfers to the new SIPP should go ahead.

It remains unclear to me why the finalised July 2020 report was not sent to Mr C until February 2021. But notwithstanding this, my view remains as explained in my provisional decision that from around 11 March 2020, having provided confirmation that he wanted the transfers to proceed, Mr C reasonably believed FFM was carrying out his instructions in this regard. I acknowledge that Mr C had not been sent documentation relating to the transfers, such as a policy document for the new SIPP. But based on Mr C's testimony, I am persuaded that he believed the transfers had taken place. Having provided his instructions for that to happen, my view remains that it was the fault of FFM that the benefits were not transferred in 2020.

I acknowledge the actions FFM has taken, having received my provisional decision, to attempt to assess whether the failure to transfer in 2020 caused Mr C a financial loss. It has obtained valuations from providers X and Y, and looked at the performance of the funds that Mr C's new SIPP was intended to have invested in. FFM's calculations indicate that Mr C is significantly better off as a result of the transfers not going ahead.

If Mr C accepts my decision, FFM will need to update its calculations, on the basis of the redress that I outline below. As I also explain below, it will need to provide Mr C with clear details of its calculations. It is of course possible that, despite FFM's errors, the failure to transfer has not caused Mr C a financial loss, because of the performance of the funds held with providers X and Y compared to how these sums would have performed in the funds chosen in the new SIPP. But to determine that, FFM needs to carry out the calculations that are shown below.

### **Putting things right**

My aim in awarding compensation is to put Mr C back in the position he's likely to have been in, but for FFM's error in failing to arrange the transfer of his pension benefits.

FFM should:

1. Obtain the fund values at the date of my decision of Mr C's pension benefits currently held with providers X and Y.
2. Establish the notional value that the new SIPP would have had, as at the date of my decision, if the benefits held with providers X and Y had been transferred into the new SIPP and invested on 15 June 2020.

It should be assumed that the new SIPP would have been invested in the model portfolio (detailed in FFM's July 2020 suitability report) from 15 June 2020 until the date of my decision.

FFM will need to obtain from providers X and Y the values which would have been transferred in June 2020. I consider it reasonable in this calculation to use the transfer values applicable as at 8 June 2020. This allows 7 days for the transferred funds to have become available for investment within the new SIPP on 15 June 2020.

Had the transfers to the new SIPP gone ahead, I understand a charge of 0.5% pa would have been applied by FFM for ongoing advice relating to the SIPP. FFM may therefore take into account this charge when calculating this notional value.



The values at (1) and (2) above should then be compared to determine if any loss has been caused to Mr C.

If the value at (1) is greater than the value at (2), Mr C will have made a gain by retaining his funds with providers X and Y, and therefore no compensation for financial loss will be payable.

If the value at (2) is greater than the value at (1), this represents the financial loss caused to Mr C as a result of FFM's failure to arrange his transfer into the new SIPP. This will result in compensation being payable to Mr C.

In light of Mr C's confirmation that he fully utilises his annual allowance for pension contributions each year, any compensation due for financial loss will need to be paid directly to him. But had it been possible to pay into the plans, the compensation amount would have provided a taxable income. Therefore any compensation due should be reduced to notionally allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr C won't be able to reclaim any of the reduction after compensation is paid.

The notional allowance should be calculated using Mr C's actual or expected marginal rate of tax at his selected retirement age. It's reasonable to assume that Mr C is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr C would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

FFM should provide details of the calculations to Mr C in a clear, simple format.

If any compensation due is not paid within 56 days of FFM receiving Mr C's acceptance of my decision, simple interest at 8% per annum on the loss identified will be payable from the final decision date to the date of settlement. Income tax may be payable on this interest, if paid. If FFM deducts income tax from the interest, it should tell Mr C how much has been taken off. FFM should give Mr C a tax deduction certificate in respect of interest if Mr C asks for one, so he can reclaim the tax on this interest from HM Revenue & Customs, if appropriate.

I also consider that FFM's failure to carry out the transfer has caused Mr C some unnecessary distress and inconvenience. Separate from the financial loss calculation that I have detailed above, I require FFM to pay Mr C £150 to reflect the difficulties its failure to arrange the transfer has caused him.

### **My final decision**

My final decision is that I uphold this complaint, and require Female Financial Management Limited to put things right in the way that I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 3 April 2023.

John Swain  
**Ombudsman**