

The complaint

Mr T complains that Scottish Widows Limited trading as Clerical Medical failed to provide, in a timely manner, the information he needed in order to withdraw his pension savings.

What happened

Mr T has been assisted in dealing with Clerical Medical, and making this complaint, by his wife. But in this decision, for ease, I will simply refer to all communication as if it had been with, and from, Mr T himself.

I issued a provisional decision on this complaint in February 2023. In that decision I explained why I thought the complaint should be upheld, and what Clerical Medical needed to do in order to put things right. Both parties have received a copy of the provisional decision but, for completeness and so those findings form part of this decision, I include some extracts from it below. In my decision I said;

Mr T held pension savings with Clerical Medical. In July 2021 Clerical Medical wrote to Mr T to remind him that he was approaching the selected retirement date for his pension policy of January 2022. It invited him to consider his options, and get in touch when he had made his decision.

Mr T says that he spoke with Clerical Medical on a number of occasions in the following months. He says that those calls generally failed to provide him with the information he was seeking – usually he says that Clerical Medical was unable to find his pension plan based on the information he had provided (that he took from the letter that Clerical Medical had sent). So, in September 2021 he complained to Clerical Medical about the lack of progress in taking his pension benefits.

Clerical Medical says that it failed to act on Mr T's complaint. But it sent him further information about his pension benefits in December 2021, and paid him the full value of his pension savings as a lump sum in January 2022. Clerical Medical apologised to Mr T for its failure to identify his complaint, and the way it had corresponded with him. It paid him a total of £150 in respect of his inconvenience and the cost of the phone calls he'd needed to make. But Clerical Medical told Mr T that it thought he was slightly better off due to the delay in taking his pension benefits.

I think there are two issues that I reasonably need to consider here. When would Mr T have taken his pension benefits had Clerical Medical not caused any delays? And what was the impact of any delays on the value of Mr T's pension benefits. I will deal with each in turn.

Clerical Medical wrote to Mr T in July 2021 to remind him that his selected retirement date was approaching in January 2022. But that selected retirement date didn't prevent Mr T from taking his pension benefits earlier. And that is what Mr T says he wanted to do. So Mr T says that he started to call Clerical Medical to discuss his situation, but that those calls failed to provide him with the information he needed to put his benefits into payment. In particular he says he wanted to establish whether

the value that Clerical Medical quoted to him was inclusive of some benefits he had accrued through paying additional voluntary contributions.

It has been difficult to establish whether, or on what basis, those calls took place. Clerical Medical says that it has searched its telephone records and cannot find any calls from the numbers that Mr T says would have been used (his landline, and both his and his wife's mobile phones). And Mr T's telephone records only date back to the end of August 2021.

I have no reason to doubt what Mr T tells us about making multiple calls in August 2021. And if, as he says, Clerical Medical failed to locate his records using the information he supplied it might be understandable that it doesn't hold any records of the calls. But the lack of any definitive call records does present me with some difficulties in concluding that Mr T would have taken his pension benefits at that time.

Mr T says that he was asking Clerical Medical for information, in particular in relation to the value of his additional contributions. It might have taken some time for that information to be provided, and for Mr T to decide how to proceed. And in fact there remains a possibility that he might not have chosen to proceed at that time at all.

But what is clear is that by the time Mr T made a call to Clerical Medical on 17 September he had decided to take his pension benefits. He was still asking for information about the value of those benefits, so I think it would be reasonable to allow a short period of time, in line with Clerical Medical's normal processing timescales, for that information to be provided. But, like our investigator, I currently think it would be reasonable to conclude that Mr T's pension benefits should have been paid to him by 1 October at the latest.

I appreciate that Mr T will be very disappointed by that conclusion. I think I should reassure him that I have not had any information from Clerical Medical about how the value of his pension benefits changed between the letter his was sent in July 2021, and the valuation as of 1 October provided in response to our investigator's assessment. So I am not basing my assessment on any change in the value of his pension savings. But I currently have no evidence to provide me with a fair conclusion that an alternative date would be more reasonable even though it might have provided a higher value to Mr T.

Clerical Medical has told us that, if Mr T's pension benefits had been paid to him on 1 October 2021, they would have been £39.70 higher than when they were actually paid on 31 January 2022. I think it is right that Clerical Medical has offered to pay that difference to Mr T. But I think the compensation being paid needs to be increased to reflect the time that Mr T was without his money.

In circumstances such as these I generally think it appropriate that a firm should pay a consumer simple interest at a rate of 8% per annum to reflect a period of time that they were denied access to their money. I currently see no reason why those normal principles shouldn't be applied here. So I think Clerical Medical should pay interest to Mr T for the period of time between 1 October 2021, when his pension benefits should have been paid, and the actual date of payment on 31 January 2022.

As I said earlier, Clerical Medical has already paid £150 to Mr T to reflect the inconvenience he has been caused, and the cost of his telephone calls. I have thought carefully about that payment and concluded that it is a reasonable reflection

of the inconvenience that was caused. So I don't currently intend to direct Clerical Medical to make any further payment of that nature to Mr T.

I invited both parties to provide us with any further comments or evidence in response to my provisional decision. Clerical Medical has said that it accepts my provisional findings. And it says it has calculated, and paid to Mr T, the additional compensation that I recommended. Mr T doesn't accept some aspects of my provisional decision and has provided some further comments. Although I am only summarising here what Mr T has said, I want to reassure him that I have read, and carefully considered, his entire response.

Mr T says that he started the process of trying to take his pension benefits very shortly after receiving Clerical Medical's letter in July 2021. He says that process was difficult with Clerical Medical failing to locate his details despite him providing the reference number of the letter he had been sent, and him calling the number provided by Clerical Medical. He says that he wanted some very simple information at that time about the value of some additional contributions he had made to his pension. And he says that on receipt of that simple information he would have taken his benefits immediately.

Mr T says that he only started keeping detailed records of his dealings with Clerical Medical in September 2021 when his frustration increased, and it became clear there was a big problem with Clerical Medical's records. So he says that explains why he is unable to provide better evidence of his earlier contact. But he says that from the tone of his conversations with Clerical Medical after September 2021 it is clear that the matter had been ongoing for some time, and that he had intended to take his pension benefits much earlier.

Mr T says he suffers from some serious medical conditions. So he says that his ability to take his retirement benefits came as a significant relief and that is why he started the process as soon as he received Clerical Medical's letter in July 2021. He says that the extended period of uncertainty and worry surrounding his pension benefits made his medical condition worse, as it reacts to stressful situations. So he doesn't consider the award of £150 for the distress and inconvenience he was caused to be sufficient.

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 I explained 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 T 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.

And I repeat my reflections on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

I've thought carefully about the additional comments that have been made by Mr T. But I am sorry to tell him that they haven't persuaded me that I should change the findings I reached in my provisional decision. But I would like to provide some further explanation.

In deciding a complaint I need to take account of all the evidence that is available. Sadly here, some of the evidence that might be helpful is unavailable given the time that has passed since the problems occurred – Mr and Mrs T's mobile phone records do not go back as far as July 2021. But I am satisfied that Clerical Medical has searched its phone records for the telephone numbers that Mr T says would have been used to contact the firm. That search failed to identify the calls that Mr T says were made.

I have no reason to doubt the testimony that Mr T has provided. But I need to balance that against the lack of phone records, either from his mobile phone provider or from Clerical Medical. I think it likely that, even if Clerical Medical had failed to link Mr T's calls to his records as he says, its phone systems would have retained a record of the calls being made. So it would be unfair of me to ignore the lack of evidence of calls being made, in preference to the testimony of Mr T.

There is a clear indication from Clerical Medical's telephone records that, by 17 September, Mr T had clearly told the firm that he wished to take his pension benefits. So my conclusion is that is the fair and reasonable date that I should use when considering any losses that Mr T might have suffered. But there is naturally a period of time, of around 10 working days, that I would think reasonable for a firm such as Clerical Medical to complete its checks and processing of an application such as this. So that is why I have concluded that a payment date of 1 October for Mr T's pension benefits would be reasonable.

I was very sorry to hear about the medical problems that are affecting Mr T. And I have no doubt that, given his job role and the additional pressures placed on him by the coronavirus pandemic, he would have been keen to retire as soon as it was financially viable. But it does seem that he understandably wanted to gather, and carefully consider, some additional information before he made an irrevocable decision to retire. And I think that might explain some of the delay between the letter being received from Clerical Medical in July, and his firm decision to retire being recorded in mid-September.

In the light of the additional information that Mr T has provided I have thought some more about the compensation I considered reasonable for Clerical Medical to pay for the distress and inconvenience it caused to him. But I haven't been persuaded that it would be fair or reasonable for me to increase the compensation that I thought was warranted in that regard.

I appreciate that my decision will be disappointing for Mr T but I cannot reasonably conclude that his benefits should have been paid to him by Clerical Medical before 1 October 2021. So that is that date that I think the firm should use when assessing any loss Mr T has experienced.

Putting things right

As I explained earlier, Clerical Medical accepted my provisional decision, and paid the relevant compensation to Mr T. In this decision I am not making any changes to that compensation so I think it likely that Clerical Medical will not need to pay anything further. But I am setting out the compensation directions in full should Mr T consider that Clerical Medical's payment is insufficient to meet my directions.

So, unless it already has done so, Clerical Medical should;

- Calculate the difference between the value Mr T would have received had the payment been made on the above date, and the payment that was ultimately made. If Mr T would have received a higher value in October 2021 Clerical Medical should pay him the difference.

- Clerical Medical should pay Mr T simple interest at a rate of 8% per annum on the net pension payment he should have received, from 1 October 2021 to the date his pension benefits were paid to him. HM Revenue & Customs requires Clerical Medical to take off tax from this interest. Clerical Medical must give Mr T a certificate showing how much tax it's taken off if he asks for one.

My final decision

My final decision is that I uphold Mr T'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 T to accept or reject my decision before 24 May 2023.

Paul Reilly
Ombudsman