

The complaint

Mr S complains that AFH Independent Financial Services Limited trading as AFH Wealth Management caused delays in the transfer of his defined benefit (“DB”) pension to a Self-invested Personal Pension (“SIPP”). He says the delays caused him financial loss and although AFH Wealth Management has paid some compensation, it’s not enough to cover all his losses.

What happened

In 2020 Mr S asked AFH to deal with a transfer of funds from his defined benefit pension scheme to a SIPP. The DB scheme provided a cash equivalent transfer value (“CETV”) of £1,016,764, which was valid until 14 January 2021.

Mr S sent the signed transfer application forms to AFH on 20 December 2020 but the DB scheme administrators needed a DB undertaking form. AFH didn’t send the undertaking form until 13 January 2021 which meant it was too late for the transfer to proceed using the CETV.

AFH asked the DB scheme if it would honour the CETV but this request was refused so a new CETV was needed, and the DB scheme required a fee to be paid for this. AFH requested the new CETV on 2 February 2021.

The DB scheme issued a new CETV in April 2021. In May AFH sent the transfer paperwork to the DB scheme administrators. The new CETV was lower than the original one.

AFH proceeded with the transfer and the SIPP provider confirmed a transfer of £969,667.85 was received on 3 August 2021.

Mr S complained to AFH that he had lost out as a result of the transfer value having dropped, and said he’d been caused additional financial loss because he’d had to wait so long for the transfer to go through. He said he had intended to use funds from the SIPP and instead had been forced to find money from other sources.

AFH accepted that the transfer didn’t go ahead with the original CETV due to its administrative failures. But it said some of the delay after January 2021 was caused by the DB scheme administrators, so it shouldn’t be held entirely to blame.

AFH offered to pay Mr S the difference between the original CETV and the actual CETV, which amounted to £47,096.83, as a full and final settlement of his complaint. As this was paid directly to Mr S rather than into his pension, 20% tax had to be deducted.

Mr S accepted this as settlement of the loss of value of the CETV but said he wanted to pursue a complaint about the further losses. AFH said that would be dealt with separately and entered into correspondence with the DB scheme administrators about the delays it said they had caused.

Mr S then referred his complaint to this service. He said he had received no further offer

from AFH in respect of the further losses.

Our investigator thought the complaint should be upheld. He said:

- AFH was responsible for the initial error, which caused them to miss the CETV date, but this had been addressed as compensation was paid for the difference in transfer value.
- AFH was then responsible for further delay between January and May 2021 – a delay of just under four months. The pension funds were transferred to the SIPP on 3 August 2021; if there hadn't been that four months delay, the funds would have been transferred on 12 April.
- AFH should put Mr S in the position he would have been in if the error hadn't occurred. But it wasn't responsible for delays all the way back to February.
- Mr S wasn't able to take the tax-free cash until August 2021 and should be compensated for loss of use of this money by a payment of interest at 8%.
- It wouldn't be fair to ask AFH to refund its charges, as Mr S would have had to pay these in any event for the transfer to happen.
- If there had been no delay, Mr S would have had his money invested in the SIPP and had access to the tax-free cash earlier. To try and put him back in this position, AFH should pay compensation as follows:
 - Mr S had lost out on use of the tax-free cash for 133 days, so AFH should compensate for this by calculating 8% interest on the difference between the original quote and the amount paid, for the period from 12 April 2021 to the date of settlement;
 - the remaining 75% would have been paid into the SIPP – for this, AFH should calculate how it would have performed, if it had been transferred when it should have been and if there was a loss, compensate for that (for the period from 12 April to 3 August 2021).
- AFH should also pay £400 to Mr S to compensate for the distress and inconvenience caused to him

Mr S made further comments but the investigator didn't change his view; he said the DB scheme administrators may have been responsible for some of the delay, but thought his reasoning in relation to this was fair. He clarified how the interest for loss of use of funds was to be calculated.

Both Mr S and AFH disagreed with the investigator's view.

I won't set out in detail everything Mr S said, but the key points include:

- Compensation for loss of access to tax-free cash should be calculated from 1 February 2021. For the loss of investment opportunity, the initial delay was caused by AFH; without that delay, funds could have been invested on 15 February 2021.
- He set out detailed calculations of losses and it's not clear why these should be ignored.
- He would have taken some of the pension fund as tax-free cash. So he should be compensated for not being able to access his tax-free lump sum in February 2021 (or April if that is the date decided on) – with 8% simple interest calculated on the full tax-free element until August.
- If the transfer had gone through without any delay, the remaining funds after taking his tax-free cash would have been transferred into his SIPP in February 2021, so he should be compensated for loss of investment growth on the pension funds calculated from 15 February, not 12 April.

The points AFH made include:

- The DB scheme administrators played a large part in the delays but that has been

ignored.

- Mr S would not have been able to take 25% tax-free cash, as he had already used 39.22% of his lifetime allowance (“LTA”) so he would have exceeded his LTA and there would have been a tax charge.
- The investigator’s view asks for the ceding scheme to calculate the notional value had it remained in place. But Mr S was transferring from a DB scheme with a guaranteed CETV, not another provider exposed to market fluctuations, so it’s not clear what’s being requested on this point.

As no agreement was reached, the complaint was passed to me to decide.

I agreed that the complaint should be upheld, but proposed a different remedy from the one suggested by the investigator. I issued a provisional decision setting out my reasons as follows:

Although I have only summarised the key points Mr S and AFH have made, I have considered everything very carefully. But I will focus on what’s at the heart of the issue I need to decide.

AFH has accepted the failure to complete the transfer with the original CETV was due to its administrative errors, so that’s not in dispute. What I need to decide is the extent to which AFH is responsible for all the losses Mr S claims, and how to put things right for him.

Mr S received compensation for the loss in value between the original CETV and the second CETV. So he’s been compensated for the fact the amount transferred to his SIPP was less than it would have been. But there’s also the loss due to the fact that amount was transferred later than it should have been, due to the further delays after January 2021.

AFH says much of the delay after the new CETV was requested was caused by the DB scheme administrators and those delays should be taken into account. It would like an explanation of why it should be responsible for those periods of delay caused by the DB scheme administrators

Where something has gone wrong my aim is to try, as far as possible, to put Mr S in the position he would have been in, if things hadn’t gone wrong. I think the key point here is that if the original error hadn’t happened, the transfer would have taken place in February.

I appreciate some of the later delays were due to AFH waiting to hear from the DB scheme administrators. But if the original error hadn’t happened, none of what followed would have happened either. It wouldn’t have been necessary to request a further CETV – the transfer would simply have gone ahead. So AFH is responsible for the delays, which happened as a result of the original error.

There are two aspects to the loss. First, Mr S did not have access to his tax-free cash. He didn’t just lose out on access to some of it, but to all of it. As I understand it, when the transfer eventually went ahead in August 2021, he took his full tax-free cash. If the transfer hadn’t been delayed, he would have had access to that money in February. So the interest for loss of use should be calculated on all of the tax-free cash.

AFH has said Mr S couldn’t have taken the full tax-free cash but as I’ve said, he did take it when he got his funds in August 2021.

The second aspect is the loss of investment growth. If the transfer had gone ahead in February 2021, the funds would have been invested and potentially increased in value. I agree with AFH that any loss should be based on a notional value from the SIPP provider,

not the DB scheme - what is needed is what it would have been worth, if it had been transferred to the SIPP earlier.

Mr S had sought further compensation for losses relating to his mortgage, car loan and other expenses. I agree with our investigator that it would be reasonable to expect Mr S to mitigate his losses, and it wouldn't be fair to expect AFH to pay costs that Mr S would always have been responsible for.

In my view, the direct losses Mr S suffered can be compensated by calculating any loss of investment growth, together with the loss of use of his tax-free cash.

Finally, it was upsetting for Mr S that his pension transfer didn't go ahead as it should have, and I agree he was put to some inconvenience as a result of the delay. Taking into account the impact and the time involved I think £400 is a fair amount to compensate him for this.

I set out my proposals for AFH to compensate Mr S, saying AFH should:

- compensate Mr S for the loss of use of his 25% tax-free cash by paying 8% simple interest on the tax-free cash from 15 February 2021 to the date Mr S received his tax-free lump sum;
- calculate how the remaining 75% that would have been invested in the SIPP would have performed had it been transferred when it should have and, if Mr S has suffered a loss, compensate him for that loss; and
- pay Mr S £400 for the distress and inconvenience caused to him.

Replies to the provisional decision

Mr S says:

- The amount he could access as a tax-free payment was capped at £189,944 – due to the fact he had previously taken out 25% from another fund.
- So the amount he would have been able to invest in February was £828,820 (£1,016,764 less tax-free cash of £189,944) – in other words, he could have invested 81.5% of the pension, not 75%.
- AFH has already calculated that between February and August 2021, the portfolio would have grown by 5.8%. So it would have grown to £862,793.75. It was in fact £858,813.18 on 18 August 2021 – and he had only taken £100,000 of the £189,944 tax free cash available. So the effective value of his SIPP on 18 August 2021 was £768,869.18. The like for like difference in value was £108,022.38.
- This includes the full CETV, the difference in which was compensated for by a payment of £47,096.83. This payment was not made until 20 September, so it should be included in the investment loss calculation for the period from February to August.
- It will have a bearing on the final settlement, and the sum of £47,096.83 will have to be deducted in line with an agreed timeline.

AFH says:

- While it was responsible for the initial error by missing the CETV deadline, this was significantly compounded by the poor service received from the DB pension scheme administrators and this should be taken into account.
- Mr S would not have been able to take 25% tax-free as it was limited to £189,000, which he took in two parts. This should also be considered in the redress methodology.

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.

Having reviewed everything in light of the further comments, I see no reason to change my provisional decision, other than to reflect the fact that Mr S wasn't able to take 25% of his pension as tax-free cash. Both Mr S and AFH agree he would not have been able to take 25% and would have been limited to £189,944. Mr S says that's 81.5% of the value of his pension but I don't think that is the correct was to consider it. That's based on the original transfer value of £1,016,764 but that isn't the amount that was actually transferred.

I appreciate Mr S says if everything had gone to plan, £1,016,000 would have been transferred in February. However, he's already been compensated for the difference in value of the CETV, which he accepted in full and final settlement. So I can't take that into account or include it in the calculations. I can only consider whether any additional loss was caused by the delays. That should be calculated on the basis set out in the provisional decision – on the delay in transferring the amount actually transferred. Mr S says the compensation he received in respect of the reduced CETV can be deducted from the settlement calculated on the original value but I don't think it can be taken into account in that way.

The remedy proposed in the provisional decision was to do two things:

- compensate Mr S for the loss of use of his tax-free cash between February and August 2021; and
- calculate whether there was an investment loss on the funds that were invested in the SIPP.

For the investment loss, I referred to this as being 75% of his pension. Both parties have confirmed Mr S couldn't take 25% tax-free and wasn't able to invest 75% of his funds. So it wouldn't be correct to refer to this as 75% of the total. But the remedy remains the same – if the transfer had gone ahead in February 2021, the funds would have been invested and potentially increased in value. So what needs to be calculated is what would have happened to the funds that were invested in August, if they had been invested in February – AFH will need to calculate how that amount would have performed had it been transferred then, rather than in August.

Mr S has provided a breakdown of what he says the loss is, but it remains my view that AFH should carry out the calculation by obtaining the notional value of the pension from the SIPP provider, as set out below.

Putting things right

Tax-free cash

To compensate Mr S for the loss of use of his tax-free cash, AFH should calculate 8% simple interest* on the tax-free cash taken by Mr S, from 15 February 2021 to the date he received his tax-free cash.

Value of the funds invested in the SIPP

For the second part, my aim in awarding fair compensation is to put Mr S in the position he would likely have been in, had it not been for AFH's error. AFH will need to calculate how the amount that was invested in August 2021 would have performed had it been transferred when it should have been.

Any loss Mr S has suffered should be determined by obtaining the notional value of the pension from the SIPP provider on the basis that it had been in the SIPP from 15 February 2021, and subtracting the current value of the pension from this notional value. If the answer

is negative, there's a gain and no redress is payable.

If there is a loss, AFH should pay the difference into Mr S' pension plan to increase its value by that lost growth. The payment should allow for charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If it's not possible to pay the compensation into Mr S' SIPP, AFH should pay that amount directly to him. But had it been possible to pay into the plan, it would have provided a taxable income. So the compensation 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 S won't be able to reclaim any of the reduction after compensation is paid.

The notional allowance should be calculated using Mr S' actual or expected marginal rate of tax at his selected retirement age.

It's reasonable to assume that Mr S is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%.

*Income tax may be payable on any interest paid. If AFH considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr S how much it has taken off. AFH should also give Mr S a tax deduction certificate in respect of interest if he asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
TAM SIPP	Still exists and liquid	Notional value from the SIPP provider	15 February 2021	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

Actual value

This means the actual amount payable from the investment at the end date.

Notional Value

This is the value of Mr S' investment had it been transferred to his current provider on 15 February 2021. AFH should request that the SIPP provider calculate this value.

Any additional sum that Mr S paid into the investment should be added to the fair value calculation at the point it was actually paid in.

Any withdrawal from the SIPP should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if AFH totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

I've chosen this method of compensation because:

- Mr S wanted Income with some growth and was willing to accept some investment risk.
- If the SIPP provider is unable to calculate a notional value, then I consider the measure below is appropriate.
- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.
- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr S' circumstances and risk attitude.

In addition, AFH should pay Mr S £400 for the distress and inconvenience caused to him by having to manage his finances during the delay.

My final decision

I uphold the complaint and direct AFH Independent Financial Services Limited trading as AFH Wealth Management to pay compensation to Mr S as set out above.

AFH Independent Financial Services Limited trading as AFH Wealth Management should provide the details of the calculation to Mr S in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 1 May 2023.

Peter Whiteley
Ombudsman