

The complaint

Mrs H's complaint is about the delays caused by WPS ADVISORY Ltd when she transferred her defined benefit occupational pension scheme (OPS) to a Self-Invested Personal Pension (SIPP).

What happened

In summary, Mrs H's OPS had an arrangement with WPS Advisory Ltd (WPSA) to offer financial advice to its members. Mrs H was considering a transfer, and WPS Advisory Ltd was advising her on it. The OPS had provided a cash equivalent transfer value (CETV) of just over £1,383,600.

Mrs H had discussions about the transfer with WPSA's adviser in April 2021. This included about the possibility of arranging the transfer as a 'buddy transfer', because Mrs H was entitled to take her pension benefits from age 50 from the OPS. A 'buddy transfer' enabled her to retain that retirement age. In the discussions Mrs H was told a suitable 'buddy' would need to be found in order to arrange the transfer on this basis. WPSA ultimately recommended that Mrs H transfer her benefits to a SIPP and invest in a portfolio managed by a discretionary fund manager (DFM).

However just prior to the CETV expiry date (28 August 2021), WPSA found there were difficulties with arranging the transfer on a 'buddy transfer' basis. It continued to attempt to find a way to arrange the transfer on this basis but found it wasn't possible. It told Mrs H in October 2021. Mrs H opted to proceed with the transfer in any event, and the transfer was received by the SIPP provider on 11 November 2021 (the CETV as originally offered).

The transfer value was put into cash rather than invested through the DFM. Mrs H said she had lost trust in WPSA, and she subsequently transferred the pension to another provider a few weeks later, in December 2021.

Mrs H complained to WPSA about the matter and subsequently referred it to us. It was considered by one of our investigators. The investigator sent his assessment of the complaint to both parties. In summary, the investigator noted that WPSA had said the OPS originally supported the idea of a 'buddy transfer', but it had changed its mind at the last minute. However the investigator said he hadn't seen any evidence that the OPS had initially supported a 'buddy transfer' or that WPSA had discussed it in detail with the OPS before the advice had been given.

The investigator said WPSA had been retained by the OPS to provide advice to its members, and although a 'buddy transfer' was a well-known concept not all schemes offered it. The investigator thought given its position as the financial adviser offered by the OPS, it should have known the OPS wouldn't facilitate a 'buddy transfer'. And WPSA should have confirmed it with the OPS much earlier in the process in any event.

However the investigator said given all background work that was required before a transfer could go ahead, and that the firm's records indicated Mrs H's suitability report was to be put into a pool of cases to be written on 20 July 2021, he thought the intention to transfer under

the 'buddy scheme' didn't hold up the transfer until the transfer application itself was signed.

The investigator noted Mrs H instructed the OPS to go ahead with the transfer on a 'non-buddy' basis, and also removed the instruction to invest through the DFM on 29 October 2021. From that date it took nine working days for the CETV to be transferred to the SIPP provider. And 22 working days for the AVC's to be transferred.

The investigator thought the complaint should be upheld. He thought given Mrs H had signed the application forms on 20 August 2021, if WPSA had already been aware of the OPS' position on 'buddy transfers' and without the delays caused, the SIPP provider would likely have received the CETV on 2 September 2021 and the AVCs on 21 September 2021. This reflected the actual timescales from when Mrs H instructed the transfer to go ahead on 29 October 2021. The investigator went on to outline how he thought WPSA should calculate fair compensation and pay it to Mrs H based on these dates.

Both parties provided further evidence and arguments to the investigator's assessment – largely about how fair compensation should be calculated and in particular the appropriate dates to assume the transfer value would otherwise have been invested. Mrs H had suggested an earlier date given she said she had been advised to transfer in April 2021. WPSA suggested a later date given it thought it would take about six weeks to complete the transfer after the application forms were signed. It also said its liability should be ended earlier given Mrs H had provided an instruction to not invest the funds and for it to wait further instruction. It said this was a change of plan and not in line with its recommendations.

WPSA also provided evidence from the DFM it had recommended saying it would 'drip-feed' the CETV into the market on a gradual basis, depending on its view of when suitable buying opportunities arose. However it said typically it would take approximately four months to get the client fully invested. WPSA thought this should be taken into account in calculating compensation.

The investigator considered the further points raised and responded to both parties. In summary, he said he'd listened to the calls that Mrs H had with the adviser in April 2021, but he didn't think WPSA had given actual formal advice to proceed at that stage. He said the calls were for information gathering purposes and to provide further information to Mrs H.

The investigator said although the firm had suggested a later date to assume completion of the transfer his suggested date was based on the actual timescales once the application forms had been signed. He said this replicated the actual position, and so thought it was reasonable.

The investigator wasn't persuaded that WPSA should limit its liability, as he thought the firms' actions had caused Mrs H to lose confidence in it. He thought if WPSA hadn't caused delays over the 'buddy transfer' Mrs H wouldn't have sent the instruction not to initially invest the funds. The investigator also didn't think the fact that the original investment manager would have drip fed the money into the market should be taken into account in the calculation of compensation given it was difficult to say exactly what investments would have been made – he thought the benchmark was appropriate.

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 done so, I've come to the same conclusions as the investigator that Mrs H's complaint should be upheld, and for the same reasons. However I've come to a slightly

different conclusion about fair compensation.

Like the investigator, I think given WPSA had an arrangement with the OPS to advise its members it ought to have been familiar with the particular scheme's rules, which do differ from scheme to scheme. But in any event, as a 'buddy transfer' depends on the OPS and receiving scheme agreeing it's a 'block transfer' ('buddy transfer'), it ought to have checked it was possible earlier.

The CETV expired at the end of August 2021. So I think WPSA ought reasonably to have been working towards arranging the transfer whilst the CETV that had been obtained was still guaranteed. I haven't seen any evidence to suggest that the transfer was delayed as a result of factors outside of WPSA's control - the hold-up appears to be it not investigating the feasibility of a 'buddy transfer' earlier and not realising that it wasn't possible until just prior to the expiry of the CETV. Like the investigator, in my opinion it should have established that a 'buddy transfer' was possible early in the process, and if it had done so the transfer would also have been completed earlier.

Detailed discussions about the transfer had started in April 2021. I accept that the direction of travel was to transfer. However as the investigator explained, there are a number of formal processes to go through before a transfer from an OPS can proceed, and formal advice recommending a transfer wasn't given until August 2021. As I said, I think the priority should have been to work towards securing the CETV that had been obtained. I think assuming the transfer had been paid on 2 September 2021 is reasonable in the circumstances, given the actual timings as explained by the investigator and that the actual CETV was secured.

As I set out above, WPSA said given the investment manager would have drip-fed the transfer value this should be taken into account in calculating compensation. This was a significant transfer value. In my experience this isn't an unusual approach and is prudent in the circumstances. WPSA has also said that given the AVCs represent a very small proportion of the overall value, it is happy to assume that both elements of the funds were received on this day. So I think when calculating compensation WPSA should assume that one third of the total transfer value (including AVCs) was invested on 2 September 2021, and then the remaining two thirds were invested in three equal proportions on 2 October, 2 November and 2 December 2021.

My final decision

My final decision is that I uphold Mrs H's complaint.

I order WPS ADVISORY Ltd to calculate and pay compensation to Mrs H as I've outlined below.

Fair Compensation

In assessing what would be fair compensation, my aim is to put Mrs H as close as possible to the position she would probably now be in if there had been no delay.

I think Mrs H would have invested differently. It is not possible to say precisely what she would have done, but I am satisfied that what I have set out below is fair and reasonable given Mrs H's circumstances and objectives when she invested.

What should WPS ADVISORY Ltd do?

To compensate Mrs H fairly WPS ADVISORY Ltd should:

- Compare the performance of Mrs H's' investment with that of the benchmark shown below. If the benchmark value is greater than the actual value at the end date, there is a loss and compensation is payable. If the actual value is greater than the benchmark value, no compensation is payable.
- WPSA should also add any interest set out below to the compensation payable.
- If there is a loss, WPS ADVISORY Ltd should pay into Mrs H's pension plan, to increase its value by the amount of the compensation and any interest. The payment should allow for the effect of charges and any available tax relief. WPS ADVISORY Ltd shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.
- If WPS ADVISORY Ltd is unable to pay the compensation into Mrs H's pension plan, it should pay that amount direct to her. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore, 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 Mrs H won't be able to reclaim any of the reduction after compensation is paid.
- The notional allowance should be calculated using Mrs H's actual or expected marginal rate of tax at her selected retirement age.
- It's reasonable to assume that Mrs H is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mrs H 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%.

investment	Benchmark	from ("start date")	to ("end date")	additional interest
SIPP	FTSE UK Private Investors Income Total Return Index	2 September 2021	Date transferred to another SIPP provider (I understand 8 December 2021)	Any loss should then be brought up to date using the same benchmark until date of decision.

As I said above, WPS should assume that one third of the total transfer value (including AVCs) was invested on 2 September 2021, and then the remaining two thirds were invested in three equal proportions on 2 October, 2 November and 2 December 2021.

In addition

- WPS ADVISORY Ltd should pay Mrs H £200 for the distress and inconvenience caused by the delays to transferring her pension.

- Provide details of the calculation to Mrs H in a clear, simple format.
- Interest at the rate of 8% simple per annum should be added to any loss calculated at the date of decision to the date of settlement if settlement isn't made within 28 days of this service notifying WPS ADVISORY Ltd of Mrs H's acceptance of this decision.
- Income tax may be payable on any interest paid. If WPS ADVISORY Ltd considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs H how much it's taken off. It should also give Mrs H a tax deduction certificate in respect of interest if Mrs H asks for one, so she can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Why is this remedy suitable?

I've chosen this method of compensation because:

- It would be difficult to say exactly how Mrs H would have been invested.
- Mrs H wanted capital growth and was willing to accept some investment risk.
- 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 Mrs H's circumstances and risk attitude.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 30 June 2023.

David Ashley
Ombudsman