

The complaint

Mr B complains that Utmost Life and Pensions Limited (Utmost) delayed carrying out his instructions to pay out his transfer pension plan in a cash lump sum, by requiring him to seek financial advice.

He says that because he lives abroad it was difficult for him to access this advice and the delay resulted in him receiving a lower amount from his pension plan. Mr B also complains that Utmost didn't "lock in" his cash equivalent transfer value (CETV) when he first asked to cash in his pension.

What happened

Mr B held a transfer pension plan with Utmost. His recorded retirement date was in April 2021.

On 25 May 2020 Mr B contacted Utmost by email with an enquiry about his pension plan.

In July 2020 Utmost responded to his enquiry and provided information about his plan. It said that as Mr B's pension included a Guaranteed Minimum Pension (GMP), which was a valuable benefit, government regulations required Utmost to ensure he had sought independent financial advice before encashing his pension plan. It enclosed a factsheet which gave details of independent organisations who could provide guidance. It also enclosed a money advice service booklet.

In February 2021, Utmost wrote to Mr B again, as he was approaching the recorded retirement date it held for him. It again set out in that correspondence that his pension plan held a valuable benefit and that he would need to seek independent financial advice before encashing it.

On 14 March 2021 Mr B emailed Utmost. He asked about the information it had provided and in particular the different values shown, namely the fund value and the cash equivalent transfer value.

Mr B asked Utmost to respond with some further clarification as he said it was difficult for him to obtain financial advice because he lived abroad, and the time difference made it difficult to contact advisers based in the UK. Mr B asked for the cash value to be transferred to his bank account. He then re-sent that email on 10 April 2021 chasing a response.

On 12 April 2021 Utmost sent an automated acknowledgement indicating it was working through a large number of information requests and it would reply to his query as soon as it could. It also advised that information was available on its website.

On 19 April 2021 Utmost responded to Mr B's enquiry indicating that the CETV was available as a lump sum, but government regulations stipulated that the plan holder must take independent financial advice before encashing safeguarded benefits. It provided information about the value of the plan.

On 17 June 2021 Mr B contacted Utmost to ask about taking the cash from his plan. Utmost confirmed he needed to obtain financial advice as a result of government regulations and referred to an organisation which might be able to help him find a regulated adviser.

Mr B then contacted Utmost again by phone on 8 July and expressed his concern about the difficulty he faced finding an adviser because he was living abroad. Utmost arranged to call him back on 15 July 2021, which it did. In that call Mr B asked whether he could provide a signed and witnessed statutory declaration instead of obtaining financial advice. Utmost's representative said that was not something they had ever come across so they would need to seek further guidance and come back to Mr B with an answer.

Utmost emailed Mr B on 2 August 2021 and apologised for the time it had taken to respond to him. It said it couldn't accept a declaration because the relevant legislation provided that financial advice had to be sought and that had to be provided by an appropriately qualified financial adviser. Utmost said if it accepted the evidence proposed by Mr B, it would be in breach of the requirements set out by the Financial Conduct Authority and it had no discretion to accept an alternative as proposed.

There was an exchange of emails with Mr B repeatedly saying he wanted to cash in his pension plan without taking any financial advice. Utmost reiterated that it had no discretion and also explained how the value of his pension plan was calculated.

On 20 December 2021 Utmost wrote to Mr B setting out why obtaining financial advice was necessary.

On 4 February 2022 Utmost emailed Mr B and reiterated the same point. It subsequently registered a complaint from Mr B about the requirement to obtain financial advice.

On 17 February 2022 Utmost responded to Mr B's complaint. It referred back to its previous correspondence regarding the requirement for independent financial advice. It then re-stated the reason for this:

"The reason for the requirement for you to take appropriate independent financial advice is that this policy contains valuable safeguarded benefits which will be given up if you take an alternative option, such as taking your savings as cash."

Mr B advised Utmost that he was still unable to access financial advice and asked whether he could use a financial adviser from the country he was living in.

On 25 February 2022 Utmost responded to Mr B and said:

"The situation for your policy beginning with xxx..... is as explained in previous correspondence. It is a requirement that you obtain advice from an adviser authorised by the UK Financial Conduct Authority (FCA) to advise on safeguarded benefits. We are unable to waive this requirement or to accept the verification provided by an adviser not authorised by the UK FCA.

You may be able to obtain help from the following website www.thepfs.org/yourmoney/find-an-adviser. Once on that website you could put XXXXX, XXXXX into the search box and then click the search icon. You should then refine your search by clicking on the box for 'Expatriate Finances' on the right hand side of the screen."

On 12 March 2022 Mr B responded and reiterated the difficulties he was having in finding an adviser. He said that he didn't think he should have to seek advice and he asked for further time to find an adviser, so that he could access the cash value of his plan as a lump sum.

Mr B then sent a further email identifying two potential firms and noting the questions asked by those firms.

On 15 March 2022 Utmost responded indicating it was unable to access the information contained within his email and asked for Mr B to re-send it.

On 17 March 2022 an adviser acting on Mr B's behalf contacted Utmost by email and asked for information about his pension plan.

On 19 March 2022 Utmost answered a separate query from Mr B about his retirement date. It also informed him that it had been contacted by a financial adviser on his behalf and it had asked for that enquiry to be dealt with urgently.

On 19 March 2022 Mr B sent Utmost the relevant form signed by his adviser.

On 23 March 2022 Utmost contacted Mr B and apologised but it said it couldn't accept the form he had provided as the adviser and company weren't authorised by the FCA. It said that it had also received an information request from an authorised company and its response was being prepared and would be issued shortly. Utmost explained that the authorised company could sign the relevant form.

On 31 March 2022 Mr B contacted Utmost to ask if the information had been sent.

On 8 April 2022 Utmost emailed Mr B and explained the drop in value of his CETV and how that figure was calculated.

On 20 April 2022 a request for information was sent to Utmost from another financial firm.

On 26 April 2022 an adviser from that firm acknowledged that it had received some information from Utmost and asked some further questions about Mr B's pension plan.

On 28 April 2022 Utmost responded to that request for further information.

Mr B then chased up the progress of his application to encash his plan.

On 9 May 2022 Utmost responded to Mr B and said it had provided information to his adviser and had spoken to their firm that day and answered their questions.

On 12 May 2022 Utmost sent a further response to Mr B's complaint explaining how the CETV worked and confirming it was not possible to "lock in" a value. It also said it had spoken to his financial adviser and confirmed that Utmost would accept the signed form via email.

On 13 May 2022 the signed adviser form was emailed to Utmost.

Mr B emailed Utmost again to see if his application had been processed.

On 20 May 2022 Utmost sent a letter by email indicating his payment had been processed on that day.

Mr B made a complaint to our service that was considered by our investigator. He concluded that Mr B's complaint should be upheld in part. The investigator didn't think Utmost had acted unfairly in requiring evidence that financial advice had been provided to Mr B, before paying out the proceeds of his pension plan given it provided safeguarded benefits. He also didn't think that Utmost should have "locked in" the CETV at the point where the majority of the paperwork had been provided. He said the relevant date was when Mr B returned all the relevant documentation.

The investigator was satisfied that Utmost had directed Mr B to reasonable further sources of information to assist him in finding a regulated adviser.

The investigator took into account Utmost's standard practice timeframe for responding to requests which was ten working days. He accepted that Mr B's request to provide a witness signed statutory declaration as an alternative would have required Utmost to seek further advice and as a result it would have taken longer for it to respond.

However, the investigator concluded that there had been a delay in responding to Mr B's initial request and some poor communication where Mr B wasn't kept updated, resulting in him having to chase a response from Utmost. He didn't think that those issues had impacted on the time it had taken to encash Mr B's pension plan which he felt was caused by the time it took to obtain the required financial advice and he said that wasn't the fault of Utmost. However, the investigator thought that Utmost should pay £200 compensation for the resulting distress and inconvenience caused to Mr B.

Mr B disagreed with the investigator's conclusions and said that he had been given incorrect advice from Utmost as they had initially told him the value of his plan was more than £95,000 and then contacted him later and told him he would only receive about £70,000. Mr B also said he had a document which indicated the cash value was £80,000. So, he felt that Utmost was trying to cheat him out of the full value of the plan.

Mr B also said Utmost had given him the wrong information for years. He said if it had given him the right advice in time then he may have been able to receive the money tax free and he would have travelled to the UK to cash the plan in here. He said that he had lost out on a significant sum of money.

As no agreement could be reached Mr B's complaint was referred to me for review.

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.

I have looked at what I consider to be the crux of Mr B's complaint, namely what happened after he requested the encashment of his pension plan in 2021. I note Mr B has also referred to information provided to him in a phone call in 2005 with his former pension provider before Utmost took over his plan. Because of the passage of time evidence of the call is not available. So, I think it would be difficult for me to reach any fair and reasonable conclusions either way about the content of that call.

Mr B is unhappy with the time it took to encash his pension plan. He said that he first requested the encashment in March 2021, but Utmost didn't action his request at that time. Mr B said instead it asked him to obtain independent financial advice which he says was costly and unnecessary.

Mr B held a transfer pension plan with Utmost and that plan provided some guaranteed benefits, namely a guaranteed minimum pension and a spouse's benefit which came into effect on the death of the plan holder. These benefits were valuable because they were guaranteed. This meant the terms of the plan required Utmost to provide a specified level of annual pension to Mr B, irrespective of the investment performance of his plan. So, if the fund value of his plan was lower than the cost of providing that benefit, Utmost would have to pay the additional amount.

Because these types of benefits are deemed to be valuable there is legislation in place to protect consumers, such as Mr B, so that they don't give up benefits without being properly aware of the value of the benefit they are giving up. The effect of that legislation (Pension Schemes Act 2015 and applicable regulations) is that providers, such as Utmost, have to ensure that the plan holder takes independent financial advice before they give up the guaranteed benefits and encash the plan, where the transfer value of their plan is over £30,000. That way the plan holder can make an informed choice about whether or not to keep their guaranteed pension benefits. This is also set out in government guidance on "*Pension benefits with a guarantee and the advice requirement*" issued by the Department for Work and Pensions.

Mr B expressed to Utmost on several occasions that he wasn't interested in taking the annual pension and he wanted to take the whole value of his plan as a lump sum. He also said that he didn't want or need financial advice, he was able to understand what was being offered but that simply wasn't something he was interested in. So, Mr B told Utmost that he didn't think he needed to take independent financial advice on this issue, and he felt he was having to pay for advice unnecessarily. Mr B also expressed the difficulty he was having in accessing financial advice about a UK pension plan because he was living abroad.

I appreciate that, for Mr B, who had a clear idea of how he wanted to access his retirement benefits, it would've been frustrating to be informed that he couldn't simply do that. First, he would have to obtain independent financial advice. However, I don't think it would be fair and reasonable to hold Utmost responsible for this because, as a financial business, it was duty bound to comply with pension legislation and regulations. And that required financial advice to be taken where the value of the pension plan was more than £30,000 and the plan contained safeguarded benefits, such as the guaranteed minimum pension provided by Mr B's plan. Ultimately, that requirement was there to try and protect consumers such as Mr B.

To recap, Utmost wrote to Mr B in July 2020 and said:

"Thank you for your e-mail of 25 May 2020.

We enclose information about your policy so you can consider your options regarding retirement.

Your policy provides a Guaranteed Minimum Pension income which is detailed on the enclosed Policy Factsheet.

Your Guaranteed Minimum Pension is very valuable and will be lost if you take your savings as cash or use them to buy an Income Drawdown policy. Government regulations require that you seek independent financial advice before encashment."

Then in February 2021, as Mr B was approaching his recorded retirement age, Utmost contacted him again and informed him of this requirement. It said:

"Your policy provides a Guaranteed Minimum Pension income, which is detailed on the enclosed Policy Factsheet.

Your Guaranteed Minimum Pension is very valuable and will be lost if you take your savings as cash use then to buy an Income Drawdown policy. Government regulations require that you seek independent financial advice before encashment."

So, I consider that when Mr B contacted Utmost in March 2021 he had already been informed, about a month before, that this requirement applied to his plan.

Utmost took longer to respond to Mr B's request than its usual practice of 10 working days, as no response was sent until 19 April 2021. While I acknowledge that there will be occasions where responses will take longer than the usual timeframe the business works towards, there doesn't appear to be a good reason why this one took longer. I note the business' comments about needing to undertake a manual calculation, but I think this was a fairly simple request. Mr B wanted to understand why there were two different values and he wished to encash his plan.

Utmost did send an acknowledgement to Mr B with a warning that it was dealing with a large number of requests, but this wasn't sent until after Mr B had sent a chaser email on 10 April 2021. So, I think that Utmost could've sent an acknowledgement, with a warning there may be a delay to its response due to its workload, at an earlier stage to keep Mr B informed and to manage his expectations.

However, I agree with the investigator that this delay in responding to his request had no material impact on the outcome. Firstly, because I think Mr B had already been made aware of the requirement for financial advice prior to April, and secondly, because it took him a long time to obtain that financial advice as a result of his particular circumstances. So, I don't think taking those additional days, over and above Utmost's standard response time, would have made any material difference to the outcome. I also note that Mr B didn't accept that obtaining advice was necessary and he continued to make this point to Utmost after April

2021.

I therefore don't think there was more likely than not any financial loss as a result of Utmost's actions, but I do think it should compensate Mr B for the distress and inconvenience caused by the time it took to respond to him without warning him of the likely delay, and I will come back to that later in this decision.

Request for alternative of statutory declaration

On 15 July 2021 Mr B asked Utmost whether he could provide a signed and witnessed statutory declaration indicating, in effect, that he was aware he was giving up guaranteed benefits instead of obtaining independent financial advice. It took Utmost some time to respond to this enquiry and it has explained this was because it wasn't a usual request and it had to seek further advice. I accept Utmost's explanation that given the nature of the request and the requirements in place for financial advice, it was reasonable for it to seek guidance and that this meant it took longer to respond than if it had been a standard question. I also note that there was some reference to seeking guidance in the telephone call with Mr B.

However, there doesn't appear to have been any contact from Utmost in the interim to let Mr B know that his request was being looked into. And I agree with the investigator that Mr B would have been concerned that no progress was being made with his enquiry. This was also against the background of his first request to encash his plan being made in March 2021.

So, I consider that Utmost should pay some compensation for the distress and inconvenience caused by that aspect as well.

Did Utmost provide Mr B with information about how to access a financial adviser

I am satisfied on balance that Utmost tried to help Mr B by giving him information about different ways in which he might be able to locate an independent financial adviser and pointing him to independent organisations which may have been able to assist. Overall, I consider it acted reasonably.

Was it reasonable for Utmost not to accept the first form provided by Mr B which had been signed by an adviser?

I am satisfied on balance that Utmost acted reasonably in not accepting the first form signed by an adviser because the adviser and firm were not authorised by the Financial Conduct Authority (FCA). I consider being authorised was an important part of the advice requirement and so I think Utmost was merely following the regulations. And I also note that Utmost informed Mr B at the same time that the other firm, who had requested information, was able to sign the form because it was authorised. So, I think it highlighted to him another reasonable option to achieve his objective of encashing his plan.

Requests for information in April 2022

I am satisfied that Utmost responded to the requests for information it received from different financial firms acting on Mr B's behalf within a reasonable time frame and within its standard turnaround times.

I note that several items of information were requested by the firm who eventually signed the form and that when that information was provided, further questions were posed. I am satisfied on balance that Utmost engaged properly with those firms to answer their requests.

However, Mr B has highlighted that his emails weren't always acknowledged promptly, and he wasn't kept updated during this period. And I think there were occasions where Utmost could have acknowledged his emails more promptly, particularly given his clear concern

around encashing his plan. Utmost did update Mr B about some of its contact with the financial firms acting on his behalf, but it didn't do this on all occasions, which I think led Mr B to believe that nothing was happening. So, I agree with the investigator that acknowledgment and communication could have been better here. And as I have already said earlier in this decision, I think Utmost should pay Mr B some compensation for the distress and inconvenience caused.

Should Utmost have locked in the CETV provided in Feb 2021, or the value in April 2021?

As the investigator has explained, the CETV was the cost of providing the guaranteed benefits held within Mr B's plan. The benefit provided was a guaranteed annual pension - sometimes referred to as an annuity. The cost of providing a specified sum of money every year for the remainder of the plan holder's life will fluctuate over time depending on various factors such as interest rates. So, what it may cost on one date may be very different for instance, six months later and that cost, is in effect, the cash value of the plan. And I note that the information provided about the value in February 2021 made it clear that that value was not guaranteed. It said:

"These values are not guaranteed and can go down as well as up."

The fund value of the plan given in February 2021 was about £72,000 which was significantly less than the cash equivalent transfer value of about £96,000 and I think that further indicates that it was calculated in a different way and based on different factors.

Similarly, the documentation in April 2021 provided a CETV but in the section entitled "Important Information" it was described as *"for illustrative purposes only"* and it stated that *"The actual amount available depends on the date you actually take your savings."*

I do appreciate the difficulty Mr B has described in obtaining financial advice about a UK pension product while living aboard. However, as Mr B wasn't able to provide all the documentation that was required for the payment out of the cash value of his plan at that time, I don't think it would be fair and reasonable to expect Utmost to pay out that value. Particularly, as the purpose of obtaining advice was to give the plan holder more information in order to make an informed choice, and from Utmost's point of view, that might have resulted in Mr B making a different choice.

So, overall, I consider that it is fair and reasonable that Utmost paid out the value of Mr B's plan at the point where all the requirements for encashing his plan had been met.

Summary

I consider £200 to be fair and reasonable compensation for the distress and inconvenience caused to Mr B due to the lack of communication from Utmost on the occasions that I have identified and the initial delay in responding to his request in March 2021. So, Utmost should pay Mr B £200.

Putting things right

Utmost should pay Mr B £200.

My final decision

My final decision is that I uphold Mr B's complaint against Utmost Life and Pensions Limited in part.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or

reject my decision before 2 August 2023.

Julia Chittenden
Ombudsman