

## **The complaint**

Mrs M has complained that WPS ADVISORY Ltd unreasonably delayed giving her advice about whether to transfer the benefits from her former employer's occupational pension defined benefit ('DB') scheme to an alternative pension arrangement. Mrs M believes she has lost out as a result.

## **What happened**

Mrs M was a deferred member of her previous employer's DB scheme. On 11 February 2022 the scheme administrators prepared a cash equivalent transfer value ('CETV') quote of around £127,500. That quote was guaranteed until 10 May 2022. On 17 February 2022 WPS wrote to Mrs M with an offer to give advice, funded by her employer, concerning her options in respect of accessing her DB scheme funds.

On 9 March 2022 Mrs M phoned WPS to make a telephone appointment to speak with an adviser. WPS didn't have any appointments available until May 2022. In a later phone call Mrs M told WPS she'd been unable to receive a state pension forecast as that wouldn't be available until after her initial appointment. WPS sent Mrs M a welcome pack and asked her to complete a questionnaire and return it no later than seven working days before the scheduled appointment. Mrs M did so.

Mrs M spoke with WPS' adviser (the first adviser) on 6 May 2022. Amongst other things she explained she wasn't reliant on the income from the DB scheme as she had other savings and pension provision. She said she was concerned that, if she were to die, her husband would only receive 50% of her DB pension entitlement. She was considering transferring the pension to her existing self-invested personal pension ('SIPP'). The first adviser said that as Mrs M didn't need to access her DB funds she could leave it where it was without putting it at risk. But if Mrs M did choose to transfer, WPS may charge her additional fees. The first adviser said that if he were to make a recommendation to transfer then it would be to a specific named personal pension provider as it would charge lower fees than Mrs M's SIPP. But additional fees might be payable if she wanted to transfer elsewhere. The first adviser agreed to find out how much the charges would be to arrange a transfer to the SIPP and whether or not he could recommend it.

Mrs M emailed WPS two days later. She said her preference was to transfer the DB funds to her SIPP. The first adviser sent Mrs M a questionnaire concerning her attitude to investment risk. He then sent Mrs M a fee schedule. That said there would be a fee of £1,500 for researching an "off panel" product. It added that WPS could charge a fee of £1,250 a year if Mrs M chose to take its ongoing advice service but that was optional. Mrs M replied as she wanted to know if the DB scheme would also charge fees for transferring out of it. She said she didn't want or need WPS' ongoing advice service. She also said she understood WPS' role was to provide regulated advice, paid for by her former employer. And, once WPS had given that advice it was up to her what she did with the funds.

Mrs M spoke again with the first adviser. He said he was satisfied that Mrs M had sufficient capacity for loss to recommend that a transfer go ahead. He said the guarantee date from

the CETV quote had expired and Mrs M would need to request a new one. They discussed the fees for WPS doing due diligence research on Mrs M's SIPP. Mrs M said she didn't understand why she would have to pay that fee.

Around a week later Mrs M spoke with the first adviser again. He asked Mrs M questions about the charges her current SIPP provider applied. But Mrs M thought his question related to WPS' charges. He also sought some further information about Mrs M's attitude to risk.

On 25 May 2022 the first adviser sent Mrs M an email which said she wasn't comfortable with any level of investment risk.

On 26 July 2022, Mrs M complained about WPS' service. She said her intention had always been to transfer the DB funds to her existing SIPP.

On 5 August 2022 WPS sent Mrs M a fee schedule that said it would charge her £1,000 (plus VAT) for its advice including the initial advice process. A week later the first adviser emailed Mrs M. He said his role wasn't simply to do what Mrs M wanted him to do. And that the regulator required WPS to consider if the destination of the transferred funds was suitable. He said WPS has researched and created a panel of investment products that it recommends to clients. If Mrs M wanted to use one of WPS' recommended product providers there would be no extra charge. But, if she wished to invest in an alternative product WPS will charge an additional fee for reviewing that product. He said that was because the "*economies of scale*" are lost and WPS incurs extra costs. So, if Mrs M wanted to use her own SIPP then she would need to agree to WPS' fee. The adviser also set out an amended risk profile which defined Mrs M's risk as 'moderately adventurous'.

Mrs M emailed WPS. Amongst other things she said:

- Why had WPS told her it would charge for its initial advice process when her former employer was paying for WPS' service?
- Why did it take WPS until 6 May 2022 to arrange the initial advice appointment? She said the CETV quote had fallen by around £12,000 since expiring.
- She had initially provided WPS with a large amount of information which should have allowed it to complete its advice.
- She saw little benefit in WPS carrying out due diligence on her SIPP.
- The adviser hadn't answered her question about whether the DB scheme would charge her a fee but he had only replied concerning WPS' fee.
- She wasn't required to follow WPS' advice and the decision about where to transfer her funds to was her own.
- The first adviser's email saying she couldn't tolerate any investment risk was clearly wrong.
- The adviser hadn't explained whether transferring to the named personal pension provider would achieve her principal objective of avoiding a loss of benefit for her husband if she were to die before him.

As the first adviser was off work because of illness a second adviser took over in September 2022. He agreed a transfer was suitable but said WPS would charge Mrs M for its due diligence work if she wanted to transfer to her SIPP. The second adviser told Mrs M that it wouldn't progress a transfer if she didn't agree with its advice. Mrs M said there was "*no way*" she would pay WPS a fee for completing due diligence on her SIPP. The second adviser answered some of Mrs M's questions about the named personal pension provider. Mrs M said she didn't want another pension pot as she already had a number of pensions. She agreed to call the second adviser back and tell him what she wished to do. The second

adviser rang Mrs M; he said that as she hadn't agreed to pay its fee it would end the advice process. Mrs M emailed WPS and said that if it agreed to honour the original CETV sum then she would pay its fee for due diligence on her SIPP.

On 24 October 2022 WPS replied to Mrs M's complaint points. Amongst other things it said Mrs M had delayed the start of the process. WPS couldn't make a recommendation without considering the receiving scheme. It required a minimum of 12 weeks to complete the advice process. As Mrs M hadn't agreed to pay its fees it couldn't complete the process before the transfer value expired.

Mrs M replied. In short she said she hadn't received the CETV until 21 February 2022 and she had responded to WPS' information request within the timeframe it gave her. It had taken WPS over eight weeks to arrange the initial appointment. The first adviser's failure to properly explain things had caused a delay. For example he hadn't said that transferring to the named personal pension provider would be equivalent to a transfer to her SIPP. She added that WPS' fee information was confusing.

WPS wrote to Mrs M again. It offered her £100 compensation for the inconvenience caused by its delay in arranging the initial appointment. But it said it didn't think it could have completed the advice process before the initial CETV had expired as Mrs M only wanted to transfer to her SIPP and didn't want to pay WPS' fees for the extra work that would be involved.

Mrs M brought her complaint to our service. One of our Investigators looked into it. He didn't uphold Mrs M's complaint. He noted that Mrs M hadn't yet transferred out of her DB scheme. He said WPS was responsible for some delays. But he thought its offer of £100 compensation was reasonable to address those. He said that Mrs M didn't wish to pay WPS' fees and so it was unlikely it could have completed the advice process before the CETV expired.

Mrs M didn't agree with our Investigator's assessment of the complaint so it's been passed to me to decide.

### **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.

In arriving at my determination I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the regulator's Principles for Business ('PRIN') and the Conduct of Business Sourcebook ('COBS'). Where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

And, while I've considered everything on file, I don't intend to address each and every point or issue raised. Instead I will focus my decision on what I see as being the key issues at the heart of Mrs M's complaint and the reasons for my decision.

### *The applicable rules, regulations and requirements*

What I've set out below isn't a comprehensive list of the rules and regulations which applied at the time of the advice, but it provides useful context for my assessment of WPS' actions here.

PRIN 6: A firm must pay due regard to the interests of its customers and treat them fairly.

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability. And the provisions in COBS 19 which specifically relate to a DB pension transfer.

Having considered all of this and the evidence in this case, I've decided not to direct WPS to take additional action for broadly similar reasons to those given by our Investigator.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6G that, when considering a transfer from a DB scheme:

*"a firm should start by assuming that a transfer, conversion or opt-out will not be suitable. A firm should only then consider a transfer, conversion or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer, conversion or opt-out is in the client's best interests."*

So, the starting assumption is that a DB transfer is unsuitable. This is known as the "presumption of unsuitability". It follows that WPS should only have considered recommending a transfer if it could clearly demonstrate on the evidence available at the time that it was in Mrs M's best interests.

*Should WPS have completed the advice process within the original CETV guarantee date?*

Mrs M said she received the CETV quote around 17 February 2022. She asked WPS for advice around three weeks later on 9 March 2022. So, by the time she contacted WPS for advice it had around nine weeks until the CETV expired. In its response to Mrs M's complaint WPS said it requires around 12 weeks to complete its advice process. Mrs M pointed out that it hadn't told her that previously. I accept that's the case. And it certainly would have helped if, at the outset, WPS had explained the likely timescales involved and that it couldn't guarantee it would meet the CETV expiry date. But I don't think it did so.

Further, when Mrs M called to make an appointment, the earliest date it could offer her was two months away and only days before the CETV would expire. WPS has acknowledged that delay was too long. So I've gone on to think about what's likely to have happened if it had arranged the appointment sooner.

DB pensions are a valuable resource and their benefits are often considered to be difficult to match (at a similar cost) from other pension products available on the open market. And, as I've said above, the regulator's guidance is that the starting point for advising firms like WPS is that a transfer will not be suitable for most people. So it should only recommend a transfer where there is evidence which clearly demonstrates it is in a customer's best interests.

There are typically a number of stages involved in considering a DB transfer. As well as gathering information from Mrs M, the regulator required WPS to obtain an appropriate

pension transfer analysis report ('APTA') and to analyse Mrs M's needs and objectives in retirement. The regulator also required WPS to make an assessment and suitable recommendation for the underlying investments where the DB funds were to be transferred to.

In this case Mrs M said her preferred destination was her existing SIPP. But the fact that Mrs M was happy with her SIPP as an investment vehicle didn't mean WPS could just accept her views on that. WPS explained that it had already researched a panel of pension providers. And it said it could most likely recommend the named personal pension provider as a suitable receiving scheme. If Mrs M accepted that option she wouldn't have to pay any further fees, as the cost was being borne by her former employer. But, if she insisted on a transfer to her SIPP, then WPS was required to do additional due diligence research into the SIPP to ensure it was suitable for her. And to complete that work, it would charge a fee. I think that was a reasonable explanation. However, Mrs M wasn't happy to pay WPS' fee and complained.

I've noted Mrs M later said there was "*no way*" she was going to pay WPS a fee for it to do due diligence on her SIPP. But she didn't have to pay that fee as she could have accepted the named personal pension provider that WPS mentioned as a destination for the transferred funds. But she didn't want to do that. In those circumstances, I think it was reasonable for WPS to charge Mrs M for the extra work needed, which wouldn't be covered by its agreement with her former employer. And, as she apparently refused to pay WPS' fees it said it couldn't continue with the process. I think that was a reasonable position for it to take.

In coming to the conclusion above, I've noted that, from the outset, the first adviser told Mrs M that there might be extra charges for her to pay if the transfer went ahead. I think WPS could have been clearer about exactly what fees applied and why. And it certainly wasn't helpful that, at one point, it told Mrs M that its charge was for its initial advice, when, in fact the extra fee was for the additional due diligence work.

But I think it's likely that even if WPS had been clear from an early stage, Mrs M would have challenged the requirement to pay fees. I say that because, having listened to the calls between WPS and Mrs M, she seemed to believe that the destination of the transferred fees was her choice. And whilst it seems that she didn't understand why WPS would charge her a fee to research a product she already felt was suitable, I'm satisfied that WPS did explain to her that the regulator required it to do the appropriate research and ensure her SIPP was a suitable vehicle before recommending a transfer.

So, as WPS was required to assess the suitability of the proposed receiving scheme (which wasn't an investment vehicle it had already looked into) I think it was reasonable for it to charge a fee for the extra work that involved. But Mrs M was clearly resistant to that notion. Further, it wasn't the case that Mrs M could have arranged the transfer herself if she wanted to act against WPS' advice. That's because, in order for a transfer to go ahead it's a regulatory requirement that Mrs M obtained a declaration from a suitably qualified financial adviser that she had received regulated advice concerning the transfer. But WPS couldn't have provided that declaration without doing the due diligence on her chosen SIPP. And WPS won't arrange a transfer on what's known as an 'insistent client' basis if Mrs M had wanted to do so. That meant that, before a transfer could have gone ahead, Mrs M would have had to complete the advice process. And to do so she would have had to agree to pay WPS' fee. I don't think, given what I've said, Mrs M was likely to have accepted that she was

required to pay WPS' fee at an early stage. The other alternative would have been for Mrs M to engage another advising firm to provide the advice for her. But in those circumstances it's likely she'd have had to pay the advising firm a fee for all of the advice process and not simply the due diligence aspect of it, seeing as it wasn't the firm engaged to give advice by her former employer .

So, I don't think that, even if WPS had arranged the initial process in a reasonable time frame it could have completed the advice process within the time available. For example, if it had arranged the first appointment within two weeks of Mrs M asking for it, that would only have left it around seven weeks to complete the entire process. And given the dispute over WPS' fee I don't think that was likely to have happened.

Further, even if it hadn't been for the fee dispute and any unreasonable delays I think it's quite likely the original CETV would have expired before WPS had concluded its process. That's because DB transfer advice is a heavily regulated process. It involves a number of steps. And only once WPS had gone through all the regulatory requirements can it make a personal recommendation to transfer. And most of the stages would require the involvement of WPS' compliance team to ensure it wasn't falling foul of the regulator's rules. So, while it might have seemed to Mrs M that this was a fairly straightforward process with an obvious outcome, that wouldn't have been WPS' approach. Each of the DB transfer stages takes thought, careful analysis and awareness of the regulatory landscape. And all these things take time.

It's certainly not unheard of that even when advising firms like WPS provide advice in a timely manner without delay, the CETV guarantee dates might be missed. And, as I've said, in this case, the CETV only had two months left at the point that Mrs M asked WPS for advice. So, it was always likely to be tight for WPS to be able to complete the advice process before the CETV expiry date. That was made all the more difficult once there was a fee dispute to be dealt with. There would also have been extra work involved in WPS carrying out the necessary due diligence work on Mrs M's SIPP. On balance, I think the time involved in resolving those issues was likely to have always meant that the CETV would have expired before WPS could have completed the advice process. So I don't think it was responsible for missing the initial CETV expiry date.

Mrs M said she would have been prepared to pay WPS' fee for the SIPP due diligence research. But only on the proviso that WPS honoured the initial CETV sum. However, that would have required WPS to make up the shortfall of around £12,000 in order to receive a £1,000 fee. I don't think that was ever a realistic prospect.

In summary, WPS didn't get everything right. I think it should have been clearer about the likely timescales involved from the outset and there's no doubt its initial advice appointment was unreasonably delayed. I also think that the first adviser could have been clearer about what its charges were for and why. But, as I've said above, I think it was likely that Mrs M would have disputed those charges even if the first adviser had provided that clarity sooner. And, in those circumstances, I don't think – on balance – WPS would have concluded the advice process before the CETV expired. I note that WPS has offered Mrs M £100 to address the impact of its initial delay. I think that appropriately reflects the inconvenience caused to Mrs M in the circumstances, so I'm not going to instruct WPS to take any further action.

**My final decision**

WPS ADVISORY Ltd has already made an offer to pay £100 to settle the complaint and I think this offer is fair in all the circumstances.

So my decision is that, unless it has already done so, WPS ADVISORY Ltd should pay Mrs M £100 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 2 August 2023.

Joe Scott  
**Ombudsman**