

The complaint

Mr H complains about the delays caused by WPS ADVISORY Ltd when it was advising him about a transfer of his benefits out of a defined benefit occupational pension scheme. He says the delays caused him a financial loss.

What happened

Mr H's complaint was considered by one of our investigators. She sent both parties her assessment of the complaint on 3 July 2023. The background and circumstances to the complaint were set out in her assessment. However to recap, in late 2021 Mr H was considering his retirement provision and contacted three different financial advisers for information and advice. He initially engaged with a firm of advisers that requested a Cash Equivalent Transfer Value (CETV) from the occupational pension scheme's (OPS) administrators. This was sent to Mr H on 18 January 2022. The CETV figure was £283,705 and was valid for three months until 18 April 2022.

Mr H said the figure was higher than he was expecting, and he's explained that he was therefore keen to proceed to transfer out of the OPS. Mr H saw from the CETV information provided that WPS ADVISORY Ltd (WPS) had been appointed by the OPS' Trustees to provide advice to members and this would be at no charge or very low cost. Mr H decided to proceed with WPS as his advisers to advise on and facilitate the transfer out.

Mr H contacted WPS and it sent him an introduction letter on 21 January 2022. An appointment pack was sent to him on 26 January 2022 with an initial appointment date of 21 March 2022.

At this stage WPS wasn't aware that a guaranteed CETV had been sent to Mr H. So at the time of the initial appointment WPS was relying on an estimated transfer figure it had obtained from the OPS' administrators (£291,044). WPS explained to Mr H in the initial appointment that it would need to request a guaranteed transfer value, which it did straight after the appointment.

Mr H got in touch with WPS on 6 April 2022 to say he'd received a letter from the OPS' administrators. The letter explained that as he'd already received his one free CETV for the year, if he wanted another it would need to be paid for. Mr H asked WPS if he should pay for a new quote or if it would be possible to work towards the existing CETV deadline of 18 April 2022.

The adviser responded to say a new guaranteed transfer value would be needed to proceed. He explained there was still a large amount to get through and therefore it wasn't possible to complete the process by the 18 April 2022 deadline.

Mr H e-mailed the adviser on 20 April 2022 to say that he'd received a new CETV and it was around £29,000 less than the previous one. He asked the adviser what the next steps would be. The new CETV figure was £254,539. The adviser responded on the same day to ask Mr H to send him a copy of the new CETV and an appointment was arranged for 4 May 2022. During this appointment the adviser explained his recommendation was for Mr H to

transfer out of the scheme and this was based on the new, re-calculated CETV.

Mr H expressed his unhappiness with the lower CETV. WPS agreed to contact the OPS' administrators to see if they would honour the original higher CETV. They did this on 6 May 2022. The OPS' administrators responded on 13 May 2022 saying the extension requested hadn't been granted.

A suitability report was issued to Mr H on 27 May 2022. The report referred to the estimated transfer value of £291,044. This caused Mr H to believe that WPS had been successful in getting the OPS to honour the previous, higher CETV which had been issued in January 2022.

Mr H completed the relevant documentation for the transfer and this was received back by WPS on 13 June 2022. WPS contacted Mr H on 16 June 2022 to confirm it had been received. It was then submitted for processing on 22 June 2022. The funds were released and transferred on 19 July 2022.

Mr H then realised WPS had not been successful in asking the OPS' administrators to honour the higher CETV value and e-mailed the adviser about it. The adviser called Mr H on 26 July 2022 to discuss the matter. He explained that the lower figure didn't impact on his recommendation to transfer out, and he apologised for the figure of £291,044 being used in the suitability report.

Mr H then complained to WPS. WPS responded to the complaint and sent its final response letter to Mr H dated 8 September 2022. Mr H was unhappy with its response and referred the matter to us.

Our investigator noted Mr H had expressed concerns about the length of time it took to get an initial appointment and considered WPS should have known a CETV had been issued and therefore of the urgency of the matter.

However the investigator said it was clear from the evidence available that WPS didn't initially know about the CETV that had been requested in January 2022. She said WPS was only engaged by Mr H after the original CETV had been sent. So WPS hadn't been sent any correspondence about it or made aware of the original CETV. Although WPS were used by the OPS' administrators to provide advice, WPS wouldn't have been sent a copy of all requests for a CETV by scheme members.

The investigator said the January CETV was only sent to Mr H directly. She said the only way WPS could have known about it or the associated deadline was if Mr H had told WPS about it, but this hadn't happened. The investigator said she appreciated that as a layperson Mr H wouldn't necessarily have known the impact not telling WPS about the existing CETV would have. But she said that didn't mean she could hold WPS responsible for not taking action about something it wasn't aware of.

The investigator said she'd reviewed the period from April to July 2022 to see if there had been any avoidable delays. However she thought WPS had completed its part of the process in a timely manner. She said it was important to bear in mind that there were other parties involved, but that she couldn't comment on their actions as the complaint we were considering was against WPS.

Overall, the investigator didn't think WPS had caused any avoidable delays to the transfer process as a whole, or that it was WPS' fault that Mr H had lost out on the higher CETV value.

The investigator noted that WPS had made a mistake in the figure it had used in its suitability report. It had used the transfer value it had originally obtained rather than the second CETV that was lower. Mr H had said this figure was also referred to in the supporting documentation provided with the suitability report. The investigator said this had caused Mr H to be under the impression WPS had been successful in requesting an extension to the CETV deadline with the OPS' administrators and had secured the higher value.

The investigator thought using the estimated figure without any explanation or context was unclear and misleading. And she thought it would have been reasonable for WPS to have let Mr H know that the OPS' administrators hadn't agreed to an extension.

The investigator said she was mindful of WPS' responsibilities as an FCA (Financial Conduct Authority) regulated firm; to be clear, fair and not misleading in its communications. She didn't think WPS had met these obligations in using the estimated figure.

The investigator noted that Mr H had commented that had a 'contract' and it was 'legally binding'. The investigator explained that Our Service wasn't a court and we couldn't determine the legal basis of the contract. She said what we could do was look at whether a business had made a mistake and, if so, award compensation (where appropriate) to put things right.

The investigator said the mistake didn't mean she could reasonably ask WPS to cover the CETV shortfall – ultimately it wasn't a figure Mr H was entitled to. She said we looked to try and put a consumer back into the position that they would have been in had no error occurred. And ultimately, Mr H was already in that position.

However, the investigator said it was clear that Mr H had experienced a loss of expectation and some upset as a result of WPS' mistake using the incorrect figure in the report. So she thought WPS should pay Mr H £200 for the distress and inconvenience caused by this.

Mr H didn't agree with the investigator's assessment. He said, in summary, that he had followed the due process as advised in the original CETV document. He said he acted very promptly at all stages in order to not cause delay. He said he expected the timescales to be up to eight weeks as per the document. And at that stage he had allowed in order of twelve weeks as he had just received the CETV quote. So he was well within the indicated six to eight weeks, and there was no obvious reason for him to contact WPS in advance of the initial appointment to advise it that he had received a CETV already. He said there was no indication that WPS would significantly exceed the six to eight weeks; a timescale which WPS should have been familiar. He said WPS should have treated it as a firm target since that was the expectation of the OPS' administrators who appointed WPS and paid it for their services.

Mr H said he did everything that was expected of him and followed due process promptly and accurately. He said WPS didn't meet the expected timescale that was presented to him. He said in a telephone conversation with WPS it was explained to him that the delay in his initial appointment was influenced by issues due to Covid19 – albeit he wasn't sure if the issues were staffing, technical or other.

The investigator responded to say that the six-to-eight-week timeframe was only indicative and was intended to give customers an indication of how long the process could take. She said the CETV document wasn't specific to WPS. And the same document also explained there were other parts to the transfer process which would take more time.

The investigator said the date Mr H was given for his initial appointment was 21 March 2022 (which he was informed of in January). So this only left about four weeks before the original

CETV expired, and less than the six to eight weeks Mr H had said he thought it would take.

Mr H responded to say that he still didn't agree with the investigator's findings. In brief, he said given the particular relationship between the OPS and WPS here, the OPS's administrators would have set timescale expectations with a knowledge of how long it should take WPS. The CETV document clearly said "*you should allow 6-8 weeks*" and didn't say it was a "*rough idea*". Mr H said WPS took 24 weeks from the start of the process (the point at which he engaged it to get to the point where the paperwork was completed and the CETV secured). It was actually only two weeks away from the second CETV expiring. Mr H said he didn't accept that the 24-week duration was reasonable. He said in his opinion WPS hadn't performed in a timely manner due to internal issues, possibly Covid related, and this caused him a financial loss.

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, and largely for the same reasons.

The original CETV said that the OPS' administrators had received a request for a CETV from Mr H's financial adviser. And named one of the firms Mr H had been liaising with prior to him engaging WPS. So I don't think the wording in the original CETV document was used in the context of the OPS' relationship with WPS.

I've seen similar wording and timescales referred to in other CETV's issued by a number of different schemes. As the investigator said, the wording is to give an overview of the process and an indication of the timescales that could be involved. But these timescales aren't binding. As well as the OPS and the advising firm there are other parties involved – for example the new pension provider and the client themselves. The OPS and advising firm can't provide guarantees to the timeliness of the other parties. Whilst I appreciate that wasn't an issue here and Mr H himself acted in a timely manner, the point is I don't think those timescales can be binding on the advising firm given it's not in control of all the process.

The first meeting with Mr H didn't take place until 21 March 2022. So the CETV deadline was only around four weeks away on 18 April 2022. As explained in the CETV document, receiving financial advice could typically take six to eight weeks. But then there were also other administrative parts to the process which took time. So it was always unlikely there would be enough time to do all that was required to meet that original CETV deadline.

As the investigator explained, the evidence available doesn't suggest that WPS was aware that Mr H had already been sent a CETV. And, therefore, that time was running on it. Like the investigator, I accept that Mr H may not have realised the significance of this. But I also don't think it's reasonable to conclude that WPS should have been aware of the urgency of arranging that initial appointment earlier or that this was a failure on WPS' part which caused the loss of the original CETV.

Mr H has referred to the contractual position. WPS were engaged to provide financial services – to advise on and subject to that advice help arrange the transfer. The transfer value itself was payable from the OPS' Trustees to the receiving scheme – Mr H hadn't contracted with WPS for it to pay the transfer value. For the reasons set out above and by the investigator, I don't think WPS was responsible for delays that resulted in the original CETV deadline being missed – in effect I don't think it failed to meet its obligations in terms of 'arranging'.

WPS did, however, use the incorrect figure in its suitability report 'advising' Mr H to transfer. So it misrepresented the position, and it could have caused Mr H to transfer when he would otherwise have remained in his original scheme. WPS has said that the lower transfer value didn't change its advice which was still to transfer, and was discussed in its meeting with Mr H on 4 May 2022. Mr H's e-mail to WPS on that same day said:

".... I'm happy with the proposed transfer to the [name of pension provider]. I'd just like to wait first for a decision by [the OPS] on the transfer amount."

The second lower CETV was sent to Mr H, and e-mail correspondence between Mr H and WPS shows he was aware that it was lower. I recognise that Mr H may have understood the OPS had agreed to the higher value given the content of the suitability report. And I appreciate he would clearly have been disappointed on finding out the actual amount transferred was the lower value. However the evidence suggests that Mr H was still intending to transfer even in the context of the lower transfer value. And I've seen no persuasive evidence that Mr H would have decided to stay with the original scheme if the suitability report had been based on the lower figure.

Like the investigator, I think Mr H would have suffered a loss of expectation for the period he understood he was obtaining the higher transfer value. And that WPS should pay him compensation for the distress reasonably caused by its error.

My final decision

Accordingly, for the reasons outlined above and by the investigator, my final decision is that WPS ADVISORY Ltd should pay Mr H £200.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 24 August 2023.

David Ashley
Ombudsman