DRN-4355470

The complaint

Mr S complains that Capital Professional Limited trading as Ascot Lloyd (Ascot Lloyd) caused delays in the transfer of his occupational pension scheme (OPS) to a self-invested personal pension (SIPP). Mr S complains that the cash equivalent transfer value (CETV) of his OPS fell by around £76,000.

What happened

Mr S approached Ascot Lloyd in 2021 because he wanted to transfer the benefits that he held in an OPS to a SIPP that he already held.

Ascot Lloyd obtained a CETV from Mr S's OPS on 11 November 2021. The CETV was £1,006,264 and was guaranteed until 5 February 2022. I will refer to this as CETV1.

Ascot Lloyd completed the advice process with a recommendation that the transfer Mr S wished to make was suitable. The transfer instruction was then sent to the receiving SIPP provider by email and post on Wednesday 2 February 2022.

The SIPP provider received that email on 2 February 2022 after business hours and by post on Friday 4 February 2022. The SIPP provider explained that it had a five day service level agreement and processed the request to the OPS administrator on Tuesday 8 February 2022. By which time the CETV had expired so the transfer didn't go through.

Mr S requested a new CETV which was £930,290 and guaranteed until 18 May 2022. I will refer to this as CETV2. Mr S decided to go ahead with the transfer of CETV2. Which completed in early April 2022.

Mr S complained to Ascot Lloyd about the time it took to provide its recommendation and process his transfer application. He blamed Ascot Lloyd for failing to secure CETV1.

Ascot Lloyd didn't agree that it was responsible for the delays. It explained that the process was complex and it hadn't provided any guarantee that the process could be completed within the guarantee period of CETV1. And it explained that the advice to transfer was as much based on Mr S's circumstances and overall objectives as it was based on the financial viability of the transfer value.

Mr S brought his complaint to our service where one of our investigators considered what happened. He identified what he thought were unreasonable delays on the part of Ascot Lloyd when it completed the abridged advice part of the process. He thought that it was unnecessary for Mr S to have had to complete the Abridged Advice Questionnaire three times for the process to move forward. And the knock on effect of that was that Ascot Lloyd ran out of time at the end of the process. Even though it had emailed the transfer request at the end of 2 February 2022 it didn't do enough to highlight the urgency to the OPS administrator, meaning that it didn't expedite the request. Our investigator thought that the transfer could have been completed by 3 December 2021. And suggested what Ascot Lloyd should do to put things right.

Ascot Lloyd disagreed. It stated that the transfer could never have completed by 3 December 2021 as that wouldn't have allowed enough time to complete all of the stages. And it still maintained that it was not responsible for the missed deadline as it had made it clear to Mr S that the process could take three to six months.

The case was referred for an ombudsman's decision. After considering what happened, I also thought that Mr S's complaint should be upheld. And issued a provisional decision to both parties to give them the opportunity to comment or provide outstanding evidence before I issued my final decision.

What I said in my provisional decision

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 Principles for Businesses ('PRIN'). And 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.

In particular I consider that the following from PRIN provides useful context for my assessment of Ascot Lloyd's actions here.

> Principle 2: *A firm must conduct its business with due skill, care, and diligence.*
> Principle 6: *A firm must pay due regard to the interests of its customers and treat them fairly.*

I will start off by acknowledging that transfers from OPS's to personal pensions – like Mr S's SIPP – are closely regulated and can be time consuming to complete. There is no set timescale for each stage of the process. And there are various parties involved, any of whom can cause delays.

Ascot Lloyd explain that it required Mr S to watch an instructional video on 1 October 2021 so that he was informed about the regulatory requirements of this type of transfer. So the process of transferring started for Mr S at the beginning of October 2021.

It appears that this was completed promptly and by 11 October 2021 Mr S had signed a client agreement, And Ascot Lloyd say that it would have completed a fact find at that time, although I have seen no evidence of it. Ascot Lloyd explains that it met with Mr S on 2 November 2021. It explains that it completed an Abridged Advice Questionnaire (AAQ) with Mr S as part of that process.

Ascot Lloyd has provided us with a copy of the AAQ that it uses. The copy we have was signed by Mr S on 5 January 2022. But I accept that was due to an administrative requirement due to a failure to have a clear copy on record from earlier in the process.

The copy of the AAQ that I have seen has a "*Frequently Asked Questions and Answers"* section. It explained that the process of gathering information until presenting a recommendation could take anywhere between three to nine months. And it did explain that a CETV would only be guaranteed for one to three months. So it might be likely that a new CETV would be required and that the OPS administrators may charge for that. So I think that Mr S ought to have been aware from the outset that it was possible that any guarantee on the CETV may not be met.

And I think it was entirely reasonable of Ascot Lloyd to manage Mr S's expectations in that way. As I acknowledged, there are other parties involved that Ascot Lloyd could not control.

For example, it would need to prepare abridged advice for Mr S to consider. But it would have no control over how long he might need to consider that advice and decide on whether to proceed. Similarly Ascot Lloyd would have no control over how long Mr S might need to consider and decide on any full recommendation it provided him. Or how quickly he might be able to provide information needed or his availability to complete the necessary forms. But including a warning about how long the process may take doesn't remove Ascot Lloyd's obligation under Principle 2 and Principle 6, referred to above.

Providing abridged advice is an option that the Financial Conduct Authority (FCA) allow to prevent the need for all consumers to go through a full and costly advice process where the recommendation may be that a transfer is unsuitable. But, where offered, it introduces another stage into the advice process which takes time. In this case, from receipt of CETV1 from the OPS administrators on 11 November 2021 it took until 4 January 2021 for Ascot Lloyd to send Mr S the abridged advice. This seems a long time and I have considered whether this was fair and reasonable.

Ascot Lloyd have stated that it had already completed a fact find and its AAQ prior to even receiving the CETV. It's provided no timeline to help me understand why it took nearly two months to give Mr S his abridged advice. I understand that it had to go back to Mr S to obtain a further signed AAQ from him because the scanned copy it had on record was unclear. It seems Mr S needed to do this a further two times. I think that it's likely that the copy we've been provided signed 5 January 2022 contained the same information that Ascot Lloyd had at the outset. And the abridged advice was provided to Mr S prior to this AAQ being signed. So I don't think this caused a delay in the process. And even if it did, this delay was not Mr S's fault.

As I have said, Ascot Lloyd haven't provided a clear explanation of why it took so long to provide abridged advice. But based on correspondence I've seen its adviser told Mr S in an email, on 10 Dec 2021, that it had the abridged report and would go through it and do a further questionnaire the next week. And move to the full report that it expected early January. This email was in a response to Mr S querying how long it would take.

Ascot Lloyd haven't provided us with the Abridged Advice report. But said it was actually completed 21 December. But this is 7 working days after Mr S was told it was available. I think that it is unlikely that the adviser was lying to Mr S. The adviser ought to have been on top of the case at the time. So I think it's more likely than not that the information the adviser gave Mr S at the time was correct.

So, based on the evidence, Mr S ought really to have been in possession of the abridged advice in the week following the email of 10 December 2021 as indicated. I think that would, quite likely have made the promised timescale of a full suitability report in early January realistic.

But Mr S wasn't sent the abridged advice letter until 4 January 2022 according to Ascot Lloyd. And it says that the request for full advice was made by 8 January 2022. Which means that Mr S did not waste a great deal of time in responding and moving to full advice. Which, given his genuine interest in the OPS transfer was not surprising.

Ascot Lloyd say that it only took a further 17 working days, from being given the go ahead to provide full advice. Ascot Lloyd have said that was not unreasonable. It hasn't explained the process or steps involved to justify the time. But it would have involved obtaining detailed analysis of the financial viability and the preparation of a detailed and considered recommendation. So I accept that 17 working days may well have been reasonable. But it leaves me even more unclear why, if full advice could be provided in that time frame, the abridged advice took so long.

Ascot Lloyd promised Mr S the provision of the abridged advice in the week following Friday 10 December 2021. So I think that by 17 December 2021 Ascot Lloyd should have delivered that to Mr S. I think he'd, more likely than not, have responded equally quickly to request full advice as the next stage.

I understand that the time that Ascot Lloyd would then have had to produce the full recommendation would have been impacted by the Christmas period. And it has explained that effectively meant that it lost from 24 December 2021 until 4 January because its office was closed. Even so, it has shown that it only needed 17 working days to produce that report. Had it acted as quickly to produce the full advice, but started to do so when I think it ought to have, it could have had everything done by 20 January 2021. Which would have been eight working days earlier than the recommendation that it actually gave Mr S.

It is worth noting that Mr S's transfer was simplified by the fact that he already had a SIPP that he wanted to use. So didn't need to apply to open that and it didn't form part of the recommendation. Which would have saved time, which would have made securing the CETV a realistic expectation.

After providing the written recommendation, dated 1 February 2022, Ascot Lloyd were able to get the transfer forms emailed and posted to the SIPP provider and the OPS scheme on 2 February 2022. This again shows no delay on Mr S's part in considering the advice or accepting it. I also think that it shows Ascot Lloyd's understanding of the urgency, with the CETV deadline being so close. But It gave the SIPP provider only two working days to process the forms. Which left too little time to have much chance of beating the CETV deadline.

I can't see any other reason for this failing than Ascot Lloyd's failure to promptly provide Mr S with the abridged advice. Which I suspect was, most likely ready from 10 December 2021. Had it delivered that when it told Mr S it would, I think the process would have completed, and the correct transfer documents been sent, by 21 January 2021. What happened after that would have been out of Ascot Lloyds hands. But based on what actually happened, I think that it's more reasonable than not that would have been enough time for the guaranteed deadline for CETV1 to have been met, given the service level agreements of the other parties. The SIPP provider would have had 10 working days to make the request for the transfer of funds, which was more time than it required.

For the reasons I've given, I don't think that the service Ascot Lloyd provided Mr S was fair or reasonable. It failed in its duty to Mr S under principle 2 and principle 6 of PRIN. But for this service failing, I think that Mr S would have most likely been in a position of having his CETV1 transferred, and at an earlier time.

The responses to my provisional decision

Mr S responded to acknowledge receipt of my provisional decision and confirm that he had no further points to raise. Ascot Lloyd didn't respond within the deadline given.

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've had no further evidence provided, or comments that I've been asked to consider. So, having considered the same evidence again, my final decision is the same as the provisional finding I reached and shared earlier. I uphold Mr S's complaint for the reasons I gave in my provisional decision and repeated above.

Putting things right

I can't know for certain what would have happened had Ascot Lloyd provided Mr S with the service I think it should have. But my intention is to put Mr S, as close as is now possible, into the position I think he'd most likely have been but for that failing.

It appears that, following the provision of CETV2, Mr S sent the transfer documentation to his SIPP provider by 23 March 2022. Which was 42 working days later than I think the completed forms should have been sent (on 21 January 2022) to the SIPP provider. Which means that. All other things being equal, Mr S's SIPP would most likely have received CETV1 42 working days earlier than it received CETV2. Ascot Lloyd recommended that Mr S invest the transfer value in '*Avellamy MPS Active 6*' investment portfolio and I think CETV1 would have been invested in that fund on the earlier date.

I think Ascot Lloyd should do the following:

A- Calculate the notional value of CETV1 if it had been received by the SIPP 42 working days before the transfer actually completed, and was invested in the *Avellamy MPS Active 6* portfolio until the date of the actual transfer of CETV2.

B- Mr S's loss at the point of the actual transfer of CETV2 is the difference between the calculation at step A and CETV2.

C- If B shows a loss, that loss should be adjusted for the effect of investment returns from the date of the actual transfer of CETV2 until the date that Ascot Lloyd is told that Mr S accepts my final decision. Those returns should be based on the actual performance of Mr S's SIPP over that period.

Mr S should be compensated by the total loss given at step C by paying that sum into his SIPP where possible. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the SIPP if it would conflict with any protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr S as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid.

If Mr S has remaining tax-free cash entitlement, 25% of the loss would be tax-free and 75% would have been taxed according to their likely income tax rate in retirement – presumed to be 20%. So making a notional reduction of 15% overall from the loss adequately reflects this.

If payment of compensation is not made within 28 days of Ascot Lloyd receiving Mr S's acceptance of my final decision, interest must be added to the compensation at the rate of 8% per year simple from the date of my final decision to the date of payment.

Income tax may be payable on any interest paid. If Ascot Lloyd deducts income tax from the interest, it should tell Mr S how much has been taken off. Ascot Lloyd should give Mr S a tax deduction certificate in respect of interest if Mr S asks for one, so he can reclaim the tax on interest from HMRC if appropriate.

In addition to this, Ascot Lloyds mistake caused Mr S a degree of distress. He suffered the disappointment of finding out at the last minute that he had lost around £76,000 from his transfer value. And was put to an unnecessary amount of inconvenience in having to request a further CETV, and the delay whilst duplicating transfer forms that he had already completed for the original transfer. So I think that Ascot Lloyd should pay Mr S £250 in compensation for this distress and inconvenience.

My final decision

I uphold Mr S's complaint and direct Capital Professional Limited trading as Ascot Lloyd to compensate Mr S in the manner set out in '**Putting things right'** above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 18 October 2023.

Gary Lane
Ombudsman