

The complaint

Mr S complains about the delays and service he experienced when attempting to take his pension benefits held with Scottish Widows Limited, trading as Clerical Medical (CM).

Mr S says that had it not been for CM's delays, his two annuities would've been set up by August rather than December 2022 – he'd now like CM to recompense him for the income payments he says he's missed out on because of their maladministration.

What happened

In June 2022, Mr S's independent financial adviser (IFA), sent an instruction to CM, asking to be added onto Mr S's existing two personal pensions as his servicing adviser. At the same time, Mr S's IFA asked CM to supply details of the two policies to them.

In September 2022, as Mr S's IFA hadn't heard anything back from CM, they chased them for an update. At that same time, his IFA also highlighted that Mr S wanted to explore taking his benefits from the two plans.

Having still not heard anything back by the following month, Mr S decided to formally complain to CM. In summary, he said that he'd wanted to take his retirement benefits in August 2022, when he'd reached his 71st birthday. Mr S went on to say that his IFA had attempted to contact CM on multiple occasions but without success, having spent many hours on hold, only to not get through.

Following the complaint, CM provided annuity quotations, which his IFA responded to shortly thereafter, requesting more tailored income terms. CM provided the updated annuity quotations to Mr S shortly after. In November 2022, Mr S decided which annuity option he wanted and the completed application forms were submitted to CM. As Mr S didn't initially hear anything back, CM were chased at the beginning of December 2022 for an update. Several weeks later, CM responded, paying Mr S his tax-free cash and then subsequent to that, his annuity payments.

In January 2023, Mr S heard back from CM about his complaint. After reviewing Mr S's concerns, CM apologised to him for not adding his IFA to the plan back in June 2022 when originally asked. They also said, in summary, that they should have responded more promptly to the annuity forms he sent into them in November 2022. In addition, CM said that they'd also backdated the annuities to October 2022 and offered him £100 for the trouble they'd caused.

Mr S was unhappy with CM's response, so he referred his complaint to this service. In summary, he said that CM should've backdated his annuities to when he'd originally intended to take the benefits from his plans, which was in August 2022. In addition, he didn't think that the £100 that CM had offered reflected the amount of hassle and inconvenience he'd suffered as a consequence of their delays.

The complaint was then considered by one of our Investigators. He concluded that CM hadn't treated Mr S fairly, but given his IFA hadn't emailed CM until September 2022 to advise them that he wished to take benefits, that's the point at which CM should base their redress calculations from. In addition, our Investigator felt that the £100 that CM had offered Mr S for the trouble that they'd caused was fair.

Mr S, however, disagreed with our Investigator's findings. In summary, he explained that his IFA had telephoned CM multiple times since sending the original June 2022 email but could never get through. He didn't think it was reasonable to ignore those attempts. In addition, he didn't think that the £100 that CM had offered for the trouble that they'd caused was reasonable, particularly in light of the amount of delays that he'd suffered.

Our Investigator was not persuaded to change his view as he didn't believe that Mr S had presented any new arguments that he'd not already considered or responded to. Mr S then asked the Investigator to pass the case to an Ombudsman to review that outcome.

After considering the complaint, I issued a provisional decision on this case because, whilst I reached the same outcome as our Investigator, I made a small revision to the redress and updated the amount that the business should pay to Mr S for the trouble and upset that they'd caused him. Therefore, I wanted to give both sides the opportunity to respond before reaching a final decision.

What I said in my provisional decision:

I'm mindful of the fact that I've summarised this complaint in far less detail than Mr S and his IFA have done. However, the purpose of my decision isn't to address every single point raised. My role is to consider the evidence presented by Mr S, his IFA and CM to reach what I think is an independent, fair and reasonable decision based on the facts of the case. In deciding what's fair and reasonable, I must consider the relevant law, regulation and best industry practice, but it is for me to decide, based on the available information that I've been given, what's more likely than not to have happened. And, having done so, whilst I'm upholding Mr S's complaint, I won't be asking CM to backdate his annuity to August as he's asked, but I will be asking them to backdate it further than they have. Whilst I'm not sure I can add a great deal more than our Investigator has already set out, I'll explain why.

It seems to me that CM have already conceded that the service they provided to Mr S wasn't delivered to the standard that they'd typically aim for. Therefore, the issue at the heart of this complaint is at what point, based on the information provided to them, should CM have converted Mr S's two pensions into an annuity for him. As part of this complaint, Mr S and his IFA, along with CM, have provided detailed timelines of what happened and when. As the facts of the case are well known to both parties, I don't intend to repeat that timeline here.

I've thought about the IFA's request to CM to add themselves onto Mr S's two pensions as the servicing agent. The IFA has said that he spent many hours waiting on the telephone trying to get through to CM to chase up his original (June 2022) email request, but without success. I've looked at CM's website, and aside from their telephone helpline, they also offer other ways to reach them: there's an online web contact option, an address to send letters to and also, a general email address. I think the latter is important because from what I've seen, Mr S's IFA sent his original instruction to add themselves as servicing agent to an individual at CM rather than a general customer service inbox. Whilst it wasn't unreasonable for Mr S's IFA to think that his instructions would be acted upon, sending an email to an individual rather than a general inbox isn't without risks, particularly if that person is on holiday or long-term sick. Mr S's IFA asked CM to confirm back to him once they'd been added as the servicing agent on his plans. So, I think that having not heard

anything back from CM for several weeks and then not being able to reach them on the telephone should've prompted Mr S and his adviser to explore other contact routes. And, given other contact options were well publicised and readily available that weren't utilised, I think that there was a missed opportunity to resolve this issue much earlier.

There's evidence that Mr S's IFA emailed CM for a second time on 14 September 2022, but they don't appear to have received a response to that note. Mr S then telephoned CM on 3 October 2022 to raise his complaint. At the same time, he asked CM to provide annuity quotations which were then issued to him two days later. It wasn't until two weeks later (19 October 2022) that CM heard back from Mr S's IFA, requesting differing quotes to the ones sent. And, a week later (on 26 October 2022), CM responded, providing the illustrations that Mr S had requested. Finally, on 8 November 2022, CM received Mr S's completed annuity application forms from his IFA via email (I note that Mr S states that the annuity application form was submitted on 1 November 2022, but from what I've seen, it seems that CM only acknowledged that they'd received the email application from his IFA on 8 November).

As the IFA hadn't heard anything back 10 days later (18 November 2022), he telephoned CM for an update. He was assured that the application was being processed, but two weeks later, CM still hadn't provided an update – so the IFA called in again (2 December 2022). CM paid Mr S his tax-free cash on 15 December 2022 and finally settled the claim on 22 and 23 December 2022, when his first annuity payments were made. CM have explained that as they received Mr S's completed annuity application forms on 8 November 2022, the annuity was backdated to a start date of 27 October 2022.

Mr S wanted his annuity payable monthly, in arrears. That means, he says, had CM carried out his instructions in a timely manner, his first annuity payment would've been paid at the end of September 2022, rather than the end of December. Whilst Mr S says that he planned to take his benefits by his 71st birthday (August 2022), it seems to me that the first mention of him wishing to extract monies from his pension wasn't highlighted to CM until 14 September 2022. His IFA's email of June 2022 made no reference at that point to Mr S wanting to take an income from his pension. Whilst I've no reason to doubt the IFA's claims that he tried to telephone CM on several occasions after his June 2022 email, as I've already explained, given CM provided other alternative pathways to reach them, I think given the urgency of Mr S's desire to start his income by his 71st birthday in August 2022, leaving the email chase until 14 September 2022 doesn't seem particularly prudent. Particularly, in light of the fact that the IFA didn't undertake further email chases prior to then, or make his client's wishes known sooner in light of the pending retirement date. So, whilst I'm of the view that CM's service was lacking in part, I don't believe that the blame for all the delays Mr S experienced is fully attributable to them.

With this in mind I've thought very carefully about how CM should put things right for Mr S and I've decided that they must use the 14 September 2022 as his 'claim date'. I think, had the IFA explained sooner than his September 2022 email to CM, that Mr S wanted to take an income from his plan, I may have been inclined to use an earlier start date than that. But, that's the first point at which CM were advised that Mr S wanted to start taking benefits from his pensions and the point at which I think CM needs to base its redress calculations from. What that means is, had it not been for CM's delays, I think it more likely than not, that they would have issued the respective annuity quotations to Mr S's IFA two days later, on 16 September 2022. The IFA would then have asked CM to tailor the annuity quotations for Mr S two weeks later, on 30 September 2022. CM would've then provided the revised annuity quotations to him on 7 October 2022 and finally, I believe the completed application form would have been received by CM 9 working days later on 20 October 2022. However, as the total pension fund is guaranteed for 30 days from the date of the annuity quotation, CM should base the claim date as 7 October 2022.

So in summary, CM have acknowledged that they failed to action the IFA's request to update the agency on Mr S's policy in June 2022, they didn't respond to follow up messages, and they've also acknowledged the fact that having received the annuity application on 8 November 2022, it then took them 46 days to make his first income payment on 22 December 2022 – that's despite Mr S telephoning them and then being passed around various departments who seemed unable to help him.

I've also thought carefully about the £100 that CM have offered to Mr S for the trouble that they've caused him. Using financial services won't always be hassle free and mistakes do happen from time to time. When determining the level of award for the trouble firms have caused consumers, we take account of a wide number of factors, and these include the time taken to put things right and the level and amount of effort that the consumer needed to make, as well as the impact that they tell us the error has had on them. I've listened carefully to what Mr S has told our Investigator and I don't think that the £100 that CM have offered to him is reasonable in light of CM's delays and actions. Therefore, I require CM to pay Mr S £350 for the trouble they've caused him, which I feel better reflects the inconvenience that CM have caused.

Mr S has explained that for a large part of the time, he was abroad (from 14 November to 23 December 2022), making the whole situation of trying to resolve the issue even more challenging for him.

Responses to my provisional decision

After reviewing my provisional decision, both Mr S and CM responded, explaining that they had nothing further to add.

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.

Given that neither party added any further comment to my provisional decision, it therefore follows that I have reached the same outcome for the same reasons that I have already set out above. As such, I require CM to take the following steps to put things right for Mr S:

Putting things right

For the reasons I've set out above, I don't think that CM treated Mr S fairly when setting up his annuity. Therefore, I require CM to take the following steps to put things right for him:

Annuity / income payments

1. Determine the value of Mr S's pension fund using a claim date of 7 October 2022.
2. Calculate the annuity that would have been payable to Mr S based on the new claim date.
3. CM should compare that income to what Mr S has been paid based on the original claim date (26 October 2022).
4. If the calculations show that Mr S has been disadvantaged by CM using the later date,

CM should:

- a. Pay to Mr S the difference that he has received, compared to what he should've received - CM should also add 8% simple interest p.a. on that amount from the date that the income would've fallen due to the date of my final decision.
- b. CM should also update Mr S's future income payments to reflect the higher income that he would now be entitled to.

CM can take account of any interest that they've already paid to Mr S in their original redress calculations.

Tax free cash

CM should determine whether, as a consequence of their delays, Mr S would've been entitled to a higher amount of tax-free cash:

1. CM should calculate the amount of tax-free cash Mr S would have received as of the new claim date (7 October 2022).
2. They should then compare that to what Mr S actually received in December 2022.
3. If Mr S would have received more tax-free cash as of the 7 October 2022 claim date, CM should pay him the difference. CM should also add 8% simple interest p.a. from the date that the tax-free cash should've been paid to the date of my final decision.

Income tax may be payable on any interest paid. If CM deducts income tax from the interest, it should tell Mr S how much has been taken off. CM 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 HM Revenue & Customs if appropriate.

Trouble and upset

Pay Mr S £350 for the trouble and upset caused. If CM have already paid the £100 that they'd offered earlier, that can be deducted from the £350.

My final decision

Pay Mr S £350 for the trouble and upset caused. If CM have already paid the £100 that they'd offered earlier, that can be deducted from the £350.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 19 November 2023.

Simon Fox
Ombudsman