

The complaint

Mr N complains that his pension plan provider, Scottish Widows Limited trading as Clerical Medical (CM) caused avoidable delays to the transfer of his pension plan from it to his Self-Invested Personal Pension (SIPP) provider. He also feels it provided him with a poor administrative service.

What happened

Mr N had a Section 32 buyout plan with CM which had a Guaranteed Minimum Pension (GMP) benefit. He also had a SIPP with a provider I'll refer to as provider I.

On 30 December 2022, I understand Mr N called CM to request a valuation of his plan. Then on 3 January 2023, he called for another valuation, including the transfer value. During this call, Mr N noted that as he would reach the plan's retirement age that year, CM would ask him what he wanted to do with the benefits from his plan. He said: *"If I want to transfer that into a SIPP I've got, I'll have to take financial advice."* CM confirmed this. Mr N also talked about the option of taking the benefits as an annuity.

CM issued a "wake-up" pack to Mr N on 13 January 2023. This pack explained the retirement options available and signposted different services that could help him to consider his options.

On 28 February, Mr N called CM again. During this call, Mr N asked about the transfer process if he wanted to transfer his plan to his SIPP provider. He also noted that his plan had grown to the point where the GMP no longer had value to him.

Mr N called CM on 2 March 2023 to request a fund switch. During this call he also asked it for transfer discharge forms so he could start the process of transferring his plan to provider I. CM issued Mr N with the requested transfer discharge forms, and current information about the plan, the same day. This included a section where CM asked Mr N for signed confirmation that he'd obtained advice on the transfer. It also explained that there were potentially valuable guarantees on the plan.

Mr N called CM again on 22 March 2023 to ask if he needed financial advice before he could transfer the plan, because of the GMP. CM confirmed he would.

On 20 April 2023, Mr N's financial advisers contacted CM about his transfer. CM sent the advisers plan information the following day. But had to send it again on 25 April 2023 when the advisers said they hadn't received it.

On 27 April 2023, the administrators of Mr N's SIPP with provider I contacted CM to request a transfer. It enclosed its own transfer forms that Mr N had signed on 28 February 2023. CM then issued Mr N with a pension transfer pack on 29 April 2023. The pack explained how to proceed with the transfer. And enclosed discharge forms alongside a proof of advice document.

Mr N completed and signed the transfer discharge form on 20 May 2023. CM received it on

23 May 2023. But Mr N didn't send the proof of advice document in with the form. So on 24 May 2023, CM sent Mr N a copy of the 29 April 2023 pack. This explained the requirements for completing the transfer.

CM said it received the discharge form from provider I on 26 May 2023. But it still didn't include the proof of advice letter.

Mr N called CM the same day to ask it if it'd received the discharge form. CM said it had the form, but that it hadn't yet been scanned onto its systems. It also told Mr N that as his plan was a section 32 buyout plan, it couldn't use Origo for the transfer.

Mr N called CM on 5 June 2023 to ask why it'd sent the copy of the 29 April 2023 pack. He felt it was chasing him for information he'd already provided. CM told him that the proof of advice letter was still outstanding. And that it needed it before the transfer could progress.

On 7 June 2023, CM sent Mr N another standard letter about the missing documentation.

Mr N's advisers emailed CM on 13 June 2023 with the outstanding proof of advice documentation. CM said it now had everything it needed. So it used 13 June 2023 as the date for the transfer value calculation.

CM mistakenly issued a further letter to Mr N, requesting additional information, on 15 June 2023. This letter was a duplicate of the April and May letters. Mr N called CM on 16 June 2023 to ask it why it'd sent the letter. CM sent a further letter to Mr N on 19 June 2023 warning him about the loss of his guarantee on transfer.

The transfer was finalised on 20 June 2023.

Mr N complained to CM on 23 June 2023 about its handling of his transfer to provider I. He felt it'd caused a delay which had led to a financial loss of around £15,000. He made the following points:

- CM had sent him multiple requests for documents that he'd already provided, for example on 29 April 2023, 24 May 2023 and 7 June 2023. And that instead of telling him what he needed to do to progress the transfer, CM had simply bombarded him with discharge requests.
- He felt CM had previously told him that he wouldn't need financial advice for the transfer, before then confirming that he would need it.
- He felt that the guarantees in his plan were worthless. And that he'd been forced to pay for expensive financial advice that could only lead to a recommendation to transfer. He felt a release letter from him should've been enough.

CM issued its final response to the complaint on 17 August 2023. It didn't think it'd caused any delays to the transfer process. And it said it hadn't been able to find any evidence that it'd previously told Mr N he wouldn't need financial advice for his transfer. But it agreed that it'd sent multiple requests for the same document. CM apologised and offered Mr N £150 compensation for the inconvenience this had caused.

Unhappy with this response, Mr N brought his complaint to this service on 25 August 2023. He wanted CM to acknowledge that it would've been reasonable for him to decline his GMP in writing and save his financial advisers' fees. He also wanted CM to reimburse him for the loss in transferred funds he felt its delays had caused him.

Our investigator didn't think the complaint should be upheld. He was satisfied that CM had provided Mr N with sufficient information to explain what was required to complete his transfer. He also felt that CM had processed the transfer within a reasonable timeframe after all the relevant documentation had been received. And that it hadn't caused any unreasonable delays to the transfer. Our investigator also said that it was a regulatory requirement for advice to be taken in situations like this one, rather than a CM requirement.

Our investigator acknowledged that it may have been confusing to repeatedly receive the same letter from CM. But felt that the £150 CM had offered was fair under the circumstances.

Mr N didn't think our investigator had addressed the appalling administration he felt he'd received. He also repeated his point that he felt CM had never sent him a letter simply stating that it needed the advice form to progress the transfer. And still felt that he shouldn't have been required to take advice under his circumstances.

Mr N also wanted to know what had caused the additional duplicate letters to be sent after his transfer was being processed. Our investigator put this to CM. It said *"Duplicate letters can be issued due to several different reasons which on many cases cannot be explained. This is however potentially due to the work item's stating "transfer enquiry" not being closed and prompting letters to be issued."*

Our investigator told Mr N that this hadn't changed his view.

As agreement couldn't be reached, the complaint has come to me for a 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.

Having done so, I agree with our investigator that CM didn't unreasonably delay Mr N's transfer. And I also agree that it wasn't possible for CM to agree to waive the advice requirement for the transfer, despite Mr N's circumstances. I know this will be disappointing for Mr N. I'll explain the reasons for my decision.

I first considered the legal requirements for advice. And whether they were correctly applied in this case.

Could CM have agreed to the transfer without advice?

I can see that Mr N feels strongly that it was so obvious that a transfer would be in his best interests, that CM shouldn't have required him to take financial advice before it could process the transfer. He feels it should've been possible for CM to allow him to decline his GMP in writing and therefore save his financial advisers' fees. So I've first considered the background to the need for advice in cases like these.

The government introduced changes to pension laws in April 2015. These were mainly under Part 4 of the Pension Schemes Act 2015 and The Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations 2015.

The laws allowed people more flexibility in the way they could access their pension benefits. But at the same time, restrictions were introduced for people with safeguarded benefits over a certain amount, requiring them to take advice. Safeguarded benefits include funds containing a GMP, as Mr N's plan with CM did.

Section 48 of the Pension Schemes Act 2015 sets out that an existing pension scheme is required to check that the member has taken regulated advice before transferring or converting safeguarded benefits into flexible benefits, unless their value is less than £30,000. As Mr N wanted to transfer his plan to his SIPP, his transfer met these conditions.

Therefore the law required Mr N to take advice, and then provide CM with a declaration from his adviser, so that it could check it had the relevant permissions to give that advice.

The check is still required on a section-32 plan where the value of the plan is much higher than the cost of providing just the GMP: all of the plan might be needed to fund the GMP if the situation worsens in future, so in that sense it is again all safeguarded.

I appreciate that Mr N understood at the time of the transfer that the requirement to check that advice had been given doesn't always apply. For example, it doesn't apply where the value of safeguarded benefits is under £30,000, or where a consumer is actually accessing the safeguarded benefits in their existing guaranteed form, or in a similarly guaranteed form (such as buying an annuity on the open market from a plan that has a GMP). But it was required in the case of a transfer to a SIPP.

Therefore, while I appreciate the frustration requiring advice caused Mr N, I can't fairly agree that CM could've agreed to the transfer without advice. It simply wasn't possible for CM to ignore the law and allow Mr N to decline his GMP in writing. So I don't uphold this part of the complaint.

Mr N also felt that CM had previously told him that he wouldn't need financial advice for the transfer, before it had told him that he would need it.

I've listened to the provided phone calls, reviewed all of the documentary evidence and considered all of the testimonial evidence. But, apart from Mr N's testimony that CM told him he wouldn't need advice in 2022, I've found no evidence that it did.

In any event, I can see from the 3 January 2023 phone call that Mr N was already aware that he'd need advice if he wanted to transfer his plan to his SIPP. I say this because Mr N said the following during that call: *"If I want to transfer that into a SIPP I've got, I'll have to take financial advice."* And CM confirmed this was correct.

Therefore I can't fairly uphold this part of the complaint.

I next considered whether CM caused any unreasonable delays to the transfer process.

Did CM cause unreasonable delays to the transfer process?

Mr N feels that CM caused a delay to his transfer which led to a financial loss of around £15,000. He said that instead of telling him what he needed to do to progress the transfer, CM had simply bombarded him with discharge requests.

The evidence shows that CM confirmed to Mr N on 3 January 2023 that he would need advice if he wanted to transfer his plan to his SIPP with provider I. And, although CM didn't explicitly state that advice would be needed for a SIPP transfer during the 28 February 2023 call, it did issue paperwork shortly afterwards, on 2 March 2023, which included a section which asked Mr N for signed confirmation that he'd obtained advice on the transfer.

The discharge forms stated:

"I confirm that as my plan is worth more than £30,000 and has one or more guarantee, I

have attached a copy of the written statement my financial adviser has given me, confirming that I have received appropriate financial advice about my retirement options and the decision I have made. “

CM also confirmed to Mr N during a call on 22 March 2023 that he'd need financial advice before he could transfer the plan. It also sent Mr N's financial adviser the information it'd sent Mr N on 3 March 2023 on 21 April 2023 and again on 25 April 2023.

Additionally, the pension transfer pack CM sent Mr N on 29 April 2023 contained the following wording at the top of the first page, after explaining it would need transfer forms:

“Due to the type of the policy, as the value is above 30,000 it's rule that we must obtain an advice letter from your financial adviser which states that you have sought advice to transfer your policy. Please send this letter as well.”

It also included the following wording in bold type on the second page:

“As losing any guarantees could leave you worse off we're legally required to check that you've taken appropriate financial advice, and will ask for proof of this of you ask to transfer.”

On 7 June 2023, CM sent Mr N another request for the missing documentation. This said:

“We are still awaiting for Receiving Scheme Declaration Form and IFA. Please connect with your new provider and complete & return enclosed form.”

This wasn't completely correct, as from what I've seen, the only outstanding information needed at this point was the proof of advice documentation. I understand that this was eventually provided on 13 June 2023.

I'm satisfied that the evidence shows that CM provided Mr N with enough clear and not misleading information about what was required to complete his transfer. Mr N knew from the start of the process that he'd need to take financial advice before he could transfer his plan to his SIPP. And that he'd have to provide CM with a proof of advice statement before the transfer could progress.

I acknowledge that Mr N didn't want to have to take advice, and felt that it was pointless in his case. But, as I noted earlier, CM had no way of removing the advice requirement for Mr N.

From what I've seen, CM got the final piece of documentation it needed to progress the transfer on 13 June 2023. It then finalised the transfer on 20 June 2023.

Therefore I consider that CM processed the transfer within a reasonable timeframe once it received all of the information it needed. So I can't fairly say that it caused any unreasonable delays to the transfer. Therefore I can't reasonably hold it responsible for any fall in transfer value. And I don't uphold this part of the complaint.

I finally considered Mr N's complaint that CM provided him with poor administration, especially when it sent him multiple requests for documents that he'd already provided.

Poor administration

Mr N felt he'd received appalling administration from CM. He also said that CM had never sent him a letter simply stating that it needed the advice form to progress the transfer.

In its final response letter, CM upheld Mr N's complaint about poor service. It said that it shouldn't have issued the same letter to him several times, especially when it hadn't been necessary. CM also acknowledged that it would've been better service to have sent a more personalised letter each time which confirmed the specific outstanding requirements. But felt that this poor service hadn't caused the overall transfer delay. It offered £150 compensation to apologise for any inconvenience it'd caused.

I've thought carefully about whether the poor service CM provided led to any transfer delays. On balance, I'm not persuaded that it did. I say this because the evidence shows that Mr N was aware from early in January 2023 that he would need financial advice if he wanted to transfer his plan to his SIPP. Although the repeat letters might have been frustrating, I consider that CM did explain on more than one occasion that the proof of advice letter was still missing.

I'm therefore satisfied that the £150 compensation CM has offered Mr N for the poor service is fair under the circumstances. And I don't uphold the complaint.

My final decision

For the reasons set out above, I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 6 March 2024.

Jo Occleshaw
Ombudsman