

The complaint

Mr C complains about The Financial Repayment Service Limited (“TFRS”) and their failure to progress his claim for mis-sold pensions and investments.

Mr C has been represented by a solicitor’s firm, who I’ll refer to as “M” during the complaint process. For ease of reference, I will refer to any actions taken, or comments made, by M as though they were made by Mr C throughout the decision where appropriate.

What happened

The claim and complaint circumstances are well known to both parties, so I don’t intend to list them chronologically in detail. But to summarise, in 2019, Mr C instructed TFRS to pursue a claim on his behalf, against a provider who I’ll refer to as “L”. L issued a final response to Mr C’s claim on 22 October 2019, sending it to TFRS as they were acting as his representative. This response included a six-month limit to refer his claim to our service.

But TFRS didn’t contact our service within this timeframe. And during this timeframe, Mr C instructed M to act on his behalf instead, who contacted L before coming to our service in September 2020. Our service ultimately decided that Mr C’s complaint about L fell outside of our service’s jurisdiction, as Mr C hadn’t brought it to us within six months of L’s initial response. Mr C was unhappy about this, as he felt TFRS had failed to progress his claim as they should’ve done, so he complained to them about this. TFRS didn’t respond and so, Mr C brought his complaint about them to the Claims Management Ombudsman, a Financial Ombudsman Service.

Our investigator looked into the complaint and upheld it. They accepted TFRS had failed to refer Mr C’s claim against L to our service within the six-month time limit. And they recognised this resulted in Mr C losing the opportunity for our service to consider his claim against L. But our investigator didn’t think they were able to say for certain Mr C’s claim against L would’ve been upheld and so, they recommended TFRS pay Mr C £250 compensation, but not the value of the claim Mr C thought he was entitled to.

Mr C didn’t agree, setting out why he thought his claim most likely would’ve been upheld by our service, considering a merits assessment we provided before realising his claim had been brought to us out of time. Our investigator considered these comments, but their recommendation remained unchanged. Mr C continued to disagree and so, the complaint has been passed to me for a decision.

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’m upholding the complaint for broadly the same reasons as the investigator. I’ve focused my comments on what I think is relevant. If I haven’t commented

on any specific point, it's because I don't believe it's affected what I think is the right outcome.

Before I explain why I've reached my decision, I think it would be useful for me to set out exactly what I've been able to consider, and how. This decision focuses solely on the actions of TFRS and the service they provided while they were regulated to perform claims management activities. I note their regulation lapsed on 3 April 2020 and so, I've only considered their actions up to this date.

I also want to note that I'm aware Mr C raised a separate complaint with the Financial Ombudsman Service about L regarding his pension and investments. So, as this issue has already been handled and addressed separately, my decision won't be making any determinations on L, and the service they provided and the products they sold, under my role as an Ombudsman within the Claims Management Ombudsman.

Finally, I want to make it clear that despite our service's requests, TFRS have failed to provide any evidence for me to consider. So, in line with our service's approach, I have made adverse inferences to this where appropriate. But I do also want to make it clear that because of this lack of engagement, and TFRS lapse in regulation, our service will be unable to enforce any decision made, should Mr C accept the decision and it becomes legally binding.

So, I've then turned to Mr C's complaint about TFRS. And from what I've seen, I don't think it's in dispute that TFRS were instructed by Mr C to pursue a claim against L for mis-sold pensions and investments. And I think it's accepted that L did issue a final response to TFRS' original claim submission rejecting the claim and directing Mr C to our service if he remained unhappy.

L have confirmed this letter was sent to TFRS only, as TFRS were acting as Mr C's representative. So, I would've expected TFRS to make Mr C aware of this response, and then refer the claim to the Financial Ombudsman Service if this is what Mr C wanted to do, which I'm satisfied it was considering the actions M have taken since.

And I don't think it's in dispute that TFRS failed to do this. So, I'm satisfied TFRS failed to progress Mr C's claim appropriately, as I'd expect and because of this, I'm satisfied they acted both unfairly and unreasonably. Considering this, I've then turned to what I think TFRS should do to put things right.

Putting things right

Any award or direction I make is intended to place Mr C back in the position he would've been in, had TFRS acted fairly in the first place.

Had TFRS acted fairly, I think they would've made Mr C aware of L's response rejecting his claim and referred his claim to the Financial Ombudsman Service for consideration within the six-month time limit set by the industry regulator.

And had this happened, Mr C would've been able to have the merits of claim considered in full by the Financial Ombudsman Service, with the possibility of a legally binding decision at the conclusion of this investigation.

So, I do think Mr C has lost the opportunity for his claim against L to be considered, and I think he should be compensated for the distress and inconvenience he will no doubt have

felt realising this was no longer an option available to him.

But crucially, I don't think I'm able to say that TFRS should be responsible for, or directed to pay, the value of the claim put forward to L. This is because I'm unable to say for certain whether Mr C's claim would've been successful, had the Financial Ombudsman Service considered the merits of the claim through its full process.

I want to make it clear I do recognise the Financial Ombudsman Service did initially provide a recommendation on the merits of Mr C's claim, before stating it was brought to them out of time. And, that this initial recommendation suggested the service may look to uphold Mr C's claim.

But crucially, at that stage, the merits assessment was only a recommendation. It was not a legally binding decision. Had the service been able to continue with an investigation into the merits of Mr C's claim against L, I'm satisfied it would most likely have been referred to an Ombudsman for a review of the claim as a whole, as L didn't agree with the initial recommendation, nor did they accept the claim after their own investigation.

And crucially, I have no way of knowing for certain whether an Ombudsman would've upheld, or rejected, Mr C's claim. And it's not my role to speculate on what I think may, or may not, have happened in that situation. So, because of the above, I won't be directing TFRS to pay the value of the claim Mr C put forward to L.

I note our investigator recommended in their view that TFRS pay Mr C £250 to recognise the loss of opportunity, and the distress and inconvenience this caused, that I've referred to above. And I think this recommendation is a fair one, that falls in line with our service's approach and what I would've directed, had it not already been put forward.

I think it fairly recognises the fact Mr C will never be able to know for certain what the Financial Ombudsman Service may have ultimately decided regarding his claim against L, and the emotional impact this will no doubt have. But I think it's also fairly reflective of the fact I'm unable to say for certain his claim would've been upheld and so, I can't say for certain TFRS' failures have caused Mr C a financial loss. So, this £250 is a payment I'm directing TFRS to pay.

I understand this isn't the outcome Mr C was hoping for. And I want to make it clear that whilst his claim against L can't be considered through the Financial Ombudsman Service, this service is an alternative to the courts and so, he is still able to explore pursuing his claim via other legal avenues should he wish to do so.

My final decision

For the reasons outlined above, I uphold Mr C's complaint about The Financial Repayment Service Limited and I direct them to take the following action:

- Pay Mr C £250 to recognise his loss of opportunity caused by their failures.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 16 May 2024.

Josh Haskey
Ombudsman