

The complaint

Mr R is unhappy with the time it took to complete a transfer following a recommendation from Opus Independent Financial Planning Limited (Opus) that Mr R transfer his pension fund.

I understand that Mr R's wife was in a similar position and the correspondence I've seen refers in places to both Mr R and his wife. But, and although I mean no discourtesy, for ease and as it's Mr R's complaint, I've just referred below to Mr R.

What happened

Mr R had a QROPS (Qualifying Recognised Overseas Pension Scheme) with Sovereign Trust. Opus (who wasn't responsible for the QROPS being set up) recommended in its report dated 10 January 2022 that Mr R transfer his QROPS to a SIPP (self invested personal pension) with Transact. The transfer wasn't fully completed until 31 July 2023.

Opus accepts there were communication failures and made an offer to settle the complaint on the basis the transfer should've been completed by 23 May 2022. Opus calculated that Mr R had suffered a financial loss of £2,350.66 and offered to pay that, plus £250 for the inconvenience caused so, in total, £2,600.66.

Our investigator said that offer was fair and reasonable and Opus didn't need to do anymore. The investigator's view, having considered the timeline of events and the information provided by all the parties, was that the main delay was outside Opus's control. It centred on a legal document – an Instrument of Amendment, Transfer and Indemnity (the Deed) to be signed by Sovereign, Transact and Mr R.

The investigator said Transact's legal team found the Deed contained a wide indemnity against Mr R and in favour of Sovereign. Transact referred that back to Mr R and questioned if he still wanted to sign it and go ahead with the transfer. Opus raised concerns about the scope of the indemnity clause and told Mr R that independent legal advice was needed. Opus sought legal advice on the matter at their own expense. Sovereign and Transact were both made aware of the legal opinion. Transact then changed their opinion and were happy to sign the document.

Mr R didn't accept the investigator's view. He and the investigator discussed it and Mr R resent some documents which I think we'd already seen. The investigator considered what Mr R had said but she didn't change her view. She explained how this service approaches complaints where an offer had been made.

Mr R had a telephone conversation with another investigator in which Mr R explained why he remained dissatisfied and that he wanted an ombudsman to review things.

In summary, Mr R said Opus had offered compensation for something they didn't accept responsibility for and were blaming Transact who weren't responsible. Mr R wanted the truth to prevail. It wasn't correct to say Transact had initially refused to sign the Deed but had later changed their mind. Transact's position had always been, having flagged up that the

indemnity clause was very wide, if Mr R was happy to sign it, Transact would proceed. Mr R referred to an email from Transact confirming that. He said Opus hadn't made him aware of that for four months and had then required him to take legal advice. Mr R suggested that was for Opus's own compliance purposes. Mr R said it didn't reflect well on us if we'd ignored the facts because a party had accepted responsibility for something they say wasn't their fault.

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.

Opus have been Mr R's advisers since 2015 and it seems he's been generally happy with the service Opus have provided. He's indicated that transferring his QROPS back to a UK pension arrangement has been something he's been looking to do for some time. Although there's some suggestion that the transfer should've happened earlier, all I'm considering here is Mr R's complaint that the transfer he instructed in early 2022 based on Opus's recommendation took too long to complete.

I've considered all the information that's been provided but I'm not going to comment on everything, just what I see as key. The central issue is that Mr R doesn't agree with what the investigator said in her view as to Transact's position about the Deed having changed and that Transact was responsible for the delays. Mr R wants to put the record straight.

Transact's email of 23 May 2022 to Opus is central. Transact said its legal team had noted that Mr R would be providing Sovereign, the ceding scheme, with an extremely wide indemnity. And, if the indemnity was requested from Transact, it wouldn't be provided. Transact asked Opus to confirm if Mr R definitely wanted to proceed with the transfer.

Mr R says it wasn't until mid July 2022 that Opus advised him there was an issue. On 27 July 2022 Opus emailed Mr R setting out what Transact had said in its email of 23 May 2022. But the sentence asking for Mr R's confirmation if he wanted to go ahead wasn't included. In an email to Mr R on 28 July 2022 Opus said the issue (why the transfer wasn't proceeding) was the indemnity which Sovereign wanted Mr R to sign before transferring the money to Transact. That was an unusual (and onerous) clause which had to be considered properly and potentially with independent legal advice. Opus emailed Mr R again on 7 September 2022. Opus repeated that Transact's legal team had flagged the indemnity in the Deed as being onerous and set out again the text of Transact's email and without what Transact had said about asking Mr R to confirm he definitely wanted to proceed. Opus said the only course of action was to seek independent expert legal advice.

Mr R's point is that wasn't the case – based on what Transact had said its email of 23 May 2022 and the sentence which wasn't shared with him – he could've simply confirmed his awareness of the indemnity and that, notwithstanding, he wanted to proceed. I've also seen Mr R's email of 4 January 2024 to Transact's legal department setting out what had been discussed in a telephone call between Mr R and Transact's legal department on 24 November 2023. Mr R said it was agreed that Transact hadn't refused to sign the Deed but had asked Opus, by email on 23 May 2022, to confirm Mr R was aware of the indemnity he'd be giving and, had Opus confirmed that, Transact would've proceeded. Statements made by Opus that Transact had refused to sign the Deed were false and might be considered libellous. Transact's legal department responded by email on 9 January 2024, confirming that Mr R's summary was accurate and that Transact didn't have anything to add.

So I'd agree that it wasn't the case that Transact had refused to sign the Deed and, in theory at least, if Opus had confirmed to Transact that Mr R wanted to proceed, then the transfer would've gone ahead at that stage.

I've said in theory as there are a couple of points I'd make. First, I think what Opus said at the time about the matter wasn't just about Transact's position, but also about Mr R's. Opus didn't, in its emails to Mr R in July and September 2022, suggest Transact wasn't prepared to sign. Opus recognised that Mr R would be providing the indemnity. But it seems Opus was concerned about Mr R's position in doing that and so suggested seeking independent expert legal advice to protect Mr R's position. I can see why Opus might've been concerned about Mr R accepting what had been noted as a wide ranging and potentially onerous liability and why Opus would've wanted to check that out before Mr R went ahead with the transfer. Hence Opus suggested seeking legal advice.

That said, I note, when the advice was to hand and Opus reported back to Mr R – Opus's letter of 13 April 2023 – Opus said it was setting out the basis of the advice to allow Mr R to make an informed decision whether to proceed with the transfer. Opus noted Mr R had previously accepted the indemnity clause and might decide to continue with the transfer based on the legal advice received. But Opus went on to say that, if Mr R considered it appropriate, he may decide to seek independent legal advice. I think that's somewhat confusing. It's not entirely clear what the point of instructing the lawyers had been, at least in terms of protecting Mr R's position, rather than (and as he's suggested) meeting Opus's compliance requirements. So I can see why Mr R might regard the legal advice (the costs of which Opus met) as superfluous and just having delayed matters.

I'd also note that a number of parties were involved in the transfer – Mr R, Transact, Opus and Sovereign. I haven't seen all of the communications between all of the parties involved. There might have been other issues which had or would've arisen, even if Opus's confirmation of Mr R's position had been given.

I know Mr R feels very strongly that Opus has misrepresented the facts and that should be corrected. And, on the face of things and based on the evidence Mr R has pointed to, I agree with Mr R that, had Opus given the confirmation requested in Transact's email of 23 May 2022, the transfer could've gone ahead then. So it wasn't the case that the delay was down to Transact's refusal to sign the Deed. Or that the matter could only proceed because Transact then changed its view about that.

But Opus has offered compensation on the basis that the transfer did proceed on that basis – indeed on the assumption that it completed on 22 May 2022. I know Mr R doesn't necessarily agree with our approach where an offer has been made. And I note what he's said about Opus having offered compensation for something it doesn't accept responsibility for. But our approach is as the investigator has indicated. We're a dispute resolution service. We aren't a court and our approach isn't the same. We won't always reach findings about everything, just what we see as central to the matter complained of. We reach our decisions on the basis of what's fair and reasonable. We may take a pragmatic and practical approach in the interests of resolving a complaint.

I think Opus's offer is fair and reasonable. It puts Mr R in the position he'd have been in if the transfer had been completed on 22 May 2022, instead of 31 July 2023. The unit price of the recommended Vanguard Fund on 28 July 2023 (the price that would've been paid on 31 July 2023) was 262.47. It had increased from 23 May 2022 by 6.26% which, based on the transfer value of £37,550.56, equated to £2,350.66. I also think the £250 for the inconvenience caused is fair and reasonable.

In saying that, I've noted what Mr R has said about how he wants the matter to be resolved. As I've explained, I'm only looking at if there was any delay on Opus's part in processing the transfer initiated in early 2022. So any apology or explanation for any alleged failure over the years to progress the transfers isn't something I'm considering here. It's a matter for Mr R if he wanted to raise further complaints with Opus. I'm not going to say Opus's investigation into the current complaint or its handling of the matter warrants any further or separate apology.

In saying £250 for distress and inconvenience is fair and reasonable, I've taken into account the impact on Mr R. As well as the delay, I recognise that he went to some trouble, for example, in contacting Transact to confirm its position. But I've also taken into account that Opus sought to minimise Mr R's inconvenience by quickly indicating, once Mr R had complained, that they'd like to settle the matter with Mr R and making what I consider (although Mr R didn't agree) was a fair and reasonable offer. It may be that Mr R will want to seek a new adviser but I don't think it would be fair to make any award for any inconvenience he may incur in doing that and taking into account that, as he himself acknowledges, his relationship with Opus (which spans some years) has been largely positive.

I can see that Mr R feels very strongly about what's happened and I recognise he's likely to be disappointed with my decision but I hope I've explained my thinking and our approach.

My final decision

Opus Independent Financial Planning Limited has already made an offer to pay Mr R £2,600.66 to settle this complaint. I think this offer is fair in all the circumstances. So my decision is that Opus Independent Financial Planning Limited should pay £2,600.66.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 11 June 2024.

Lesley Stead
Ombudsman