

The complaint

Mr R complains that WPS Advisory Ltd (“WPS”) was responsible for delays which led to him missing the acceptance deadline of 23 March 2022 to transfer the value of his defined benefits (“DB”) pension to a private pension arrangement. He says that this led to him suffering a financial loss of £278,517 after the transfer value reduced.

What happened

The events leading up to this complaint were set out in detail by our investigator in her assessment which she provided to both Mr R and WPS. I don’t intend to repeat here in detail what our investigator stated but will instead provide a summary. For simplicity, figures in this decision are given in pounds with the pence omitted.

Mr R built up benefits in a DB pension scheme. The trustees of the DB pension scheme had previously appointed WPS to provide advice to scheme members who were contemplating a pension transfer. The cost of advice was covered by the DB pension scheme.

Mr R was interested in transferring the value of his DB pension to a private pension arrangement. He wanted to obtain control of the transfer value so that he could decide how it was used during his lifetime and distributed on his death.

In December 2021, the administrator for the DB pension scheme issued a transfer value of £788,333 to Mr R – this was the capitalised value of his DB pension if he transferred his entitlement to a private pension arrangement. The transfer value had an acceptance deadline of 23 March 2022 – if Mr R wanted to accept the transfer value, he had to accept it by that date and meet the requirements set out by the administrator for the DB pension scheme. If the deadline was missed, the transfer value would be re-calculated. This is because the transfer value is based on various underlying assumptions which change over time.

Section 48 of the Pension Schemes Act 2015 stipulates that members of DB pension schemes must take regulated financial advice before being allowed to transfer out preserved benefits worth more than £30,000. The purpose of this ‘*advice requirement*’ is to ensure scheme members are fully aware of what they would be giving up by transferring and to understand the significant increase in risk to which they would be exposed once they leave the DB pension scheme.

Since Mr R’s transfer value was greater than £30,000, he was required to take advice before he would be permitted to transfer out. On 6 January 2022, he phoned WPS to request advice. On the next day, WPS emailed several documents to Mr R including a general client agreement ahead of the scheduled phone call with an adviser on 26 January 2022.

Between 26 January 2022 and 23 March 2022, Mr R had several phone calls with WPS’s adviser. They also exchanged several emails during this period. The purpose of those phone calls and emails was to enable WPS to gather sufficient information to enable it to formulate and present a personal recommendation to Mr R.

However, the deadline of 23 March 2022 passed before WPS was able to formulate and present a personal recommendation to Mr R. No further action was taken at that time and so Mr R's DB pension remained preserved in the scheme.

In December 2022, the administrator for the DB pension scheme issued an updated transfer value of £509,816 to Mr R. He was upset that the transfer value was £278,517 less than the transfer value previously offered in December 2021. He complained to WPS because he believed that its delays between January and March 2022 led to him missing the deadline of 23 March 2022. To put things right, he said he wanted to be placed into the financial position he'd be in now had the pension transfer been completed before 23 March 2022 and based on the transfer value of £788,333.

WPS didn't uphold Mr R's complaint. In its final response it explained its reasons why and concluded:

"1. It is clear a transfer was never going to be arranged before the original value expired on 23 March 2022.

2. No clear decision had been made that a transfer recommendation was going to be forthcoming.

3. By not transferring, you have not suffered a loss at this stage."

Mr R didn't accept WPS's final response. Our investigator didn't recommend upholding this complaint. She explained that the FCA's rules and guidance in connection with DB pension transfers required WPS to complete several steps before it was able to provide a personal recommendation – and that it was still in the process of completing those steps by the deadline. She thought WPS could've acted in a timelier manner on some occasions and been proactive in chasing outstanding information it needed from Mr R to be able to provide advice. But, overall, she didn't think this led to WPS failing to issue a personal recommendation before the deadline of 23 March 2022. Notwithstanding this, she stated that even if WPS had provided a personal recommendation before the deadline, it was unclear whether it would've advised Mr R to transfer anyway. And since Mr R's DB pension remained preserved in the scheme, she didn't think he had suffered a financial loss.

Mr R didn't agree with our investigator's opinion. He provided substantial additional comments setting out his reasons why. Our investigator considered those comments but wasn't persuaded to change her view. Since agreement couldn't be reached, this complaint has now been allocated to me to review and decide. This is the last stage of our process.

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 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. 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.

I've considered all the evidence afresh including WPS's and Mr R's comments in response to our investigator's assessment. I'd like to clarify that the purpose of this decision isn't to repeat or address every single point raised by the parties to this complaint. So 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.

The FCA's rules and guidance on DB pension transfers

The starting point in deciding this complaint is to consider the regulator's rules and guidance when regulated businesses provide advice in connection with DB pension transfers. These are set out in the FCA's Handbook in COBS 9 and COBS 19. The FCA expects businesses to start the advice process by assuming that a pension transfer is unsuitable and to only recommend a transfer if it can *clearly* demonstrate it's in their client's best interests. In demonstrating suitability, businesses are required to consider other ways of meeting the client's objectives so that they can maintain the DB pension.

I understand the reasons why Mr R was interested in transferring the value of his DB pension to a private pension arrangement. However, given the FCA's default position and presumption of unsuitability, WPS couldn't simply take an order from Mr R and blindly facilitate a pension transfer so that he could achieve his objectives. As the expert in the transaction, WPS was required to first go through a comprehensive advice process to establish if a pension transfer was clearly in Mr R's best interests taking into account any alternative options.

Typical DB pension transfer advice process

For Mr R's benefit, I think it's important to highlight that there are several stages in a typical DB pension transfer advice process. These include but are not limited to:

- Client onboarding;
- Information gathering (including understanding the client's personal and financial situation, objectives and needs, knowledge and experience, attitude to transfer and investment risk);
- Obtaining relevant information from the DB pension scheme;
- Carrying out appropriate pension transfer analysis and cashflow modelling;
- Carrying out research and analysis on alternative options and any proposed new pension arrangement (where a transfer is to be recommended);
- Formulating a suitable personal recommendation; and
- Presenting the personal recommendation in a suitability report.

The outcome of the above steps would result in either a personal recommendation to leave the DB pension preserved in the scheme or to transfer the capitalised value to a new arrangement.

Is WPS responsible for Mr R missing the transfer deadline?

Mr R has questioned some aspects of WPS's advice process. He believes it contained unnecessary and convoluted steps which contributed to him missing the deadline of 23 March 2022.

I haven't seen any evidence that makes me think WPS took unnecessary or convoluted steps in Mr R's case. WPS's information gathering process posed the sort of questions I'd expect to see. It's important to note here that if WPS provided a personal recommendation without having first gathered the necessary information, it would've failed to comply with the FCA's suitability requirements. And by not complying, it increased the risk of giving Mr R unsuitable advice. So the information WPS requested was needed to help inform its view on whether a pension transfer was clearly in Mr R's best interests.

The evidence shows that WPS had determined Mr R's risk profile and carried out appropriate transfer analysis. But it was still information gathering when the deadline expired on 23 March 2022. I can see that WPS didn't receive some information it initially requested from Mr R on 14 February 2022 until two days before the deadline.

Like our investigator, it's my view WPS could've acted in a timelier manner on some occasions and been proactive in chasing outstanding information it needed from Mr R. I can see that he was frustrated that some phone calls weren't returned. Overall, however, I'm not persuaded that had WPS carried out those steps sooner, it would've led to it issuing a personal recommendation before the deadline of 23 March 2022.

What was WPS going to advise Mr R to do?

Mr R is working on the basis that WPS was always going to provide a positive recommendation to transfer; it's this assumption that underpins his belief he's suffered a significant financial loss of £278,517 after WPS failed to provide a personal recommendation before the deadline. I don't agree that it's as clear cut as this.

Even if WPS was able to issue a personal recommendation before the deadline, it's unclear what it would've recommended in any event. WPS's email to Mr R on 17 March 2022 shows even at that point, six days before the deadline, the adviser hadn't yet determined if a pension transfer was appropriate. Bearing in mind the FCA's expectation that businesses should start the advice process by assuming a pension transfer is unsuitable, I think it was more likely than not WPS would've ultimately advised Mr R *not* to transfer. And, in that scenario, he'd be in the same financial position he's in now with his DB pension preserved in the scheme. I haven't seen any evidence that makes me think WPS was going to advise Mr R to transfer.

Putting things right

There are two elements of compensation that I can award. The first is any financial loss I find Mr R may have incurred and the second is for distress and inconvenience.

It's my view that Mr R hasn't suffered a financial loss because his DB pension remains preserved in the scheme. So I don't think it would be fair or reasonable in these circumstances for me to require WPS to pay Mr R compensation on the basis the pension transfer was completed before 23 March 2022 and based on the transfer value of £788,333 when his DB pension remains preserved in the scheme.

I've considered any distress and inconvenience Mr R may have suffered. Overall, I think it's clear he experienced frustration, disappointment and a loss of expectation. So I think an award for this is warranted. Having considered the evidence, I think that an amount of £300 is appropriate in the circumstances.

My final decision

I uphold this complaint. I direct WPS Advisory Ltd to pay Mr R £300 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 20 August 2024.

Clint Penfold
Ombudsman