DRN-5175173

Financial Ombudsman Service

The complaint

Mrs M complains that Gemini Wealth Management Limited delayed the transfer of three pensions into her retirement account and the payment of the tax free lump sums she was entitled to. She's suffered financial loss, distress and inconvenience as a result.

What happened

Mrs M had three pension accounts – B1 (**456), B2 (**457) and J. She says she wanted to transfer all three of these pensions into her collective retirement account with a firm I'll refer to as Q. Mrs M also had a pension account with R.

She wanted to take 25% of each pension as a tax free cash lump sum and use this cash to partially repay her mortgage and to fund her day to day living expenses for a period of time.

Mrs M approached Gemini towards the end of January 2023 to ask for advice about this matter. Her intention was to fully retire in July 2023.

Mrs M says she received a retirement pack in respect of the B2 pension which showed a guaranteed transfer value of £58,062.58 with an expiry date of 10 June 2023. She says that a guaranteed transfer value for the B1 pension was received on 19 June 2023.

On 21 March 2023 Mrs M informed Gemini she also wanted to take the tax free cash sum from her R pension. However, as this was a smaller pension, she decided to deal with the arrangements to take this pension herself.

In May 2023 Mrs M informed Gemini she wished to review her J pension. She wanted to transfer this pension to Q also and withdraw the maximum allowable Pension Commencement Lump Sum (tax free cash).

Mrs M was in regular contact with Gemini throughout the period, and especially during June 2023. She was concerned about the expiry date on the transfer value she'd obtained. She wanted reassurance that everything would be completed so that she could retire in the way she'd planned. However, she says that due to delays and errors by Gemini the process had to be restarted in August. She didn't receive the tax free cash for her B1 and B2 pensions until 3 November 2023 and 21 September 2023, respectively. She received the tax free cash for her J pension on 4 September 2023.

Mrs M says that because of the delays she was unable to repay her mortgage as originally planned. She had to incur additional borrowings of £10,000 from her mortgage provider and £5,000 from family to cover the additional costs. She says she lost out on investment growth of the funds that would've been transferred to her account with Q much earlier but for the delays. She also says she experienced distress and inconvenience because of the delays. She thought her losses were in excess of £38,000. She complained to Gemini.

Gemini investigated her complaint. It accepted it had not completed the transfer of her B1 and B2 pensions in a timely manner and said that it should have completed these transfers within the three month guarantee period. It said that because of the delays she'd not been able to partially repay her mortgage in the way she'd wanted to. It said it had already agreed to reduce the initial adviser fee by £500. In addition, it agreed to refund all of the interest she'd paid on her mortgage account between June 2023 and October 2023 (£997.58). It also agreed to pay her £200 for the distress and inconvenience she'd experienced.

Gemini did not accept it had delayed the transfer of the funds from the J pension. It said the plan information was received on 5 July 2023 and the transfer completed around 11 weeks later.

Mrs M did not agree. She referred her complaint to our service.

Our investigator looked into her complaint. She thought that all of the transfers should've been completed in June 2023. Because of the delays, Mrs M had to drawdown additional funds to pay her mortgage and pay for day to day expenses. She also wasn't able to repay her mortgage in line with what she'd planned.

Our investigator thought Gemini should calculate what Mrs M would've paid in interest on her mortgage had she reduced her balance by £25,000 in June 2023 and ultimately paid off her mortgage in November 2023. Gemini should compare this to what had actually happened. If Mrs M had paid more interest overall Gemini should reimburse her for this amount. Our investigator didn't think Gemini should reimburse the additional borrowing of £15,000 which Mrs M had incurred. She said that because Mrs M had had the benefit of these loans, it wasn't reasonable to ask Gemini to repay the capital amounts to her.

Our investigator considered the distress and inconvenience Mrs M had experienced as a result of the delays. She thought £200 wasn't enough to compensate Mrs M for what had happened. She said Gemini should pay Mrs M £700 (in total) by way of compensation for the distress and inconvenience she'd experienced.

Mrs M did not agree. She said our investigator had failed to understand that the additional borrowing of £15,000 was by way of loan – it had not been gifts. She'd been forced to then use part of her tax free cash to repay these loans and hadn't been able to use it to repay her mortgage. She'd incurred extra costs as a result. She'd also lost out on investment growth because the transfers to the Q account hadn't happened in June as expected. Mrs M thought our investigator hadn't fully understood the distress and inconvenience she'd experienced. £700 was not enough compensation.

Gemini also responded to what our investigator said. It said that after making the comparison in the interest payments on Mrs M's mortgage, in line with what our investigator had said, it calculated the additional interest Mrs M had incurred was £427.85 – which was less than the amount it had offered to pay her in its final response letter. It agreed to pay this amount to her together with £700, as indicated by our investigator, for distress and inconvenience.

Because Mrs M did not agree the complaint was passed to me to decide. I issued a provisional decision in which I said:

> ***What I've provisionally 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.*
>
> *There is no dispute that the B1 and B2 pensions should have been transferred to Q before the end of June 2023. Gemini has accepted that in its final response letter.*

There is a dispute concerning whether Gemini was responsible for a delay in the transfer of the J pension to Q and the payment of the pension commencement lump sum on that pension. The J pension was transferred on 4 September 2023.

So, I will look first at whether Gemini should be held responsible for any delay in the transfer of the J pension.

When Mrs M first approached Gemini in January 2023, she provided it with a letter of authority in respect of her B1 and B2 pensions. However, I haven't been provided with any evidence that she asked for advice about her J pension at that time. It appears she only raised the matter of the J pension on 15 May 2023 and provided a letter of authority in respect of that pension on 22 May 2023.

After it received the letter of authority Gemini sought information from J so that it could include the J pension in its advice. A pack was sent out to Mrs M on 7 July. She signed and returned the transfer documents on 10 July 2023. Gemini sent the completed documents to Q the next day. Despite that the transfer didn't complete until 4 September.

I've looked at the explanations provided by both Q and J for the delay between 10 July and 4 September. However, I don't think it's fair or reasonable to hold Gemini responsible for this delay. It wasn't responsible for what happened during this period. I can see it did contact both Q and J to try to get the matter progressed as urgently as possible and it did suggest to Mrs M that she should also contact J to apply additional pressure to try to expedite matters. But having considered everything I've provisionally decided that Gemini was not responsible for the delay in the transfer of the J pension or the delay in the payment of the tax free cash sum to Mrs M.

What I've provisionally decided needs to be done to put things right

As set out above, Gemini has already accepted in its final response letter that it did not complete the transfer of the B1 and B2 pensions in a timely manner. It needs to put things right for this delay.

I've also provisionally decided it was not responsible for the delay in the transfer of the J pension. So, I don't think it needs to take any further action regarding the transfer of the J pension.

When a business makes errors it's not our role to fine or punish it. We look to see what the business has done to put things right and whether its proposals are fair and reasonable in all the circumstances of the case.

When thinking about what needs to be done to put things right our Rules provide that we can make a money award for such amount as we consider to be fair compensation for one or more of the following:

- *financial loss (including consequential or prospective loss);*
- *pain or suffering;*
- *damage to reputation;*
- *distress or inconvenience whether or not a court would award compensation.*

There's further information available on our website setting out what our service takes into account when deciding what amount of compensation would be fair overall to put right the impact a mistake has on a complainant.

Financial Loss

My aim in providing fair compensation for financial loss is to put Mrs M as closely as possible into the position she would probably now be in if Gemini hadn't caused a delay.

So, I've thought about what's most likely to have happened had there not been any delays with the transfer of the B1 and B2 pensions.

Mrs M intended to use £25,000 from the B1 and B2 tax free cash sums to reduce her mortgage. She reasonably believed those payments would be made in June 2023 and as a result the mortgage payments (which included capital and interest) from July onwards would be reduced. She also intended to use £3,500 from the R pension to pay down her mortgage in June and she intended to use other cash resources to make overpayments of £1,500 per month to her mortgage after that date until the mortgage was repaid (expected to be October/November 2023). In her submission to our service she's explained that the additional cash resources she's referred to were made up of a mixture of funds - including excess tax free cash, savings and intended drawdowns from her account with Q (I'll refer to these sums as "additional cash resources").

Mrs M says she also intended to use £5,000 of the tax free sum from her J pension to partially repay her mortgage. Although she says she would have received this in June, I'm not persuaded for the reasons set out above that Gemini was responsible for any delay around the payment of this pension. So, I don't think it's fair or reasonable to say that Gemini should be responsible for any losses Mrs M experienced because the J pension wasn't available until September.

Mrs M says her financial plans were frustrated by the delay. Because the tax free cash wasn't received she couldn't pay down her mortgage as quickly as she'd intended. Instead she had to incur additional borrowings on her mortgage of £5,000 on 6 July and £5,000 on 29 August. She needed this money to pay her mortgage repayments and for her day to day living expenses. Her mortgage repayments increased as a result of the extra borrowing.

In addition, she had to borrow £5,000 from her family.

When she received the tax free cash from her J pension on 4 September she says she had to use this to repay the loan she'd received from her family. She'd originally intended to use this to part repay her mortgage.

After receipt of the B1 and B2 pensions there was still a significant outstanding loan balance because of the additional borrowing she'd incurred. And she says it's taken much longer to repay her mortgage. She says she eventually was able to clear the mortgage in July 2024 - but that was only possible because she decided to completely restructure her borrowings into a new loan.

It is the case that the delay interfered with Mrs M's plans.

Mrs M has set out the losses she says she incurred because of what happened. These amount to over £38,000. I've considered what she's said.

Additional Borrowing

Mrs M thinks Gemini should be required to repay the additional loan capital she borrowed - £15,000 in total. She also thinks it should be liable for any additional capital and interest repayments she made on her mortgage after the date when she'd expected the tax free lump sums to have been available.

It is the case that the reason why Mrs M decided to take increased borrowing and a loan from a family member was because most of the "additional cash resources" she thought would be available to pay down her mortgage early hadn't been released. She was then forced to borrow to make the repayments on her mortgage and for her day to day living expenses.

However, that doesn't mean she was ultimately deprived of those additional cash resources. She did subsequently receive the tax free cash she was entitled to and the residual pension amounts were paid into her account with Q - and was available for future drawdowns. Those sums were paid to her in September 2023 (B2 pension) and November 2023 (B1 pension). So, I don't think it's fair or reasonable that Gemini should have to pay her the capital sums she borrowed or the repayments of capital she made to her mortgage account during the period of the delay. I'm also not persuaded, on balance, Gemini should have to pay Mrs M for any costs or interest she incurred after she received the tax free cash sums and the residual balances of her pensions were paid into her account with Q.

When thinking about what's fair and reasonable compensation I've thought about the additional costs Mrs M incurred because she had to use loans (rather than additional cash resources she might otherwise have been able to use) to pay her mortgage and for daily living expenses. I think it's fair and reasonable she should be reimbursed for any additional costs she incurred.

The additional costs she incurred were:

- *the additional interest she paid on her mortgage, because the tax free cash payments were delayed; and*
- *the interest on the additional loan (for £10,000) she took out with her mortgage provider to cover the period until the tax free cash was paid and she was able to access her drawdown account with Q.*

It doesn't appear that Mrs M was charged interest on the loan she obtained from a family member (£5,000). But, I've taken the fact that she had to borrow from family into account when considering distress and inconvenience she experienced. I'll comment further about that below.

I can see that during the period between June and November 2023, the interest rate on Mrs M's mortgage varied from month to month. However the maximum interest rate she was charged during this period was 5.74%. Re-working the mortgage account to calculate exactly how much interest Mrs M incurred during the period, because of the delay in payment of the tax free cash sum, would be very complex – partly because of the variable interest rate changes and also because she only intended to use part of the tax free cash to partially repay her mortgage.

Our service tries to resolve complaints quickly and informally. So, I've provisionally decided it's fair and reasonable that Gemini should have to pay Mrs M 8% simple interest per annum on the amount of the tax free cash on the B1 and B2 pensions she would've received but for the delay. This amount of 8% simple interest is designed broadly to reflect aspects such as loss of having the money and also* *potential higher borrowing costs which would have been incurred by not having the money*

The B1 pension tax free cash was paid in November 2023 (five months delay) and the B2 pension tax free cash was paid towards the end of September 2023 (three months delay).

I've also provisionally decided Gemini should pay Mrs M 8% simple interest per annum on the additional borrowing (£10,000) over the entire five month period. As I've said above I haven't included the borrowing from a member of her family in this amount.*

I've set out below how I've provisionally decided this should be calculated:

> *A x 8% simple interest per annum* x 5 months*
> *Plus*
> *B x 8% simple interest per annum* x 3 months*
> *Plus*
> *C x 8% simple interest per annum*x 5 months*
>
> *Where:*
> *A is the tax free cash from the B1 pension that would've been paid in June 2023*
>
> *B is the tax free cash from the B2 pension that would've been paid in June 2023*
>
> *C is the total amount of additional borrowing from Mrs M's mortgage provider £10,000.*

**Income tax may be payable on any interest paid. If Gemini deducts income tax from the interest, it should tell Mrs M how much has been taken off. Gemini should give Mrs M a tax deduction certificate in respect of interest if Mrs M asks for one, so she can reclaim the tax on interest from HM Revenue & Customs if appropriate.*

Although, overall, the total amount of tax free cash paid to Mrs M was marginally higher than it would've been had the payments been made in June 2023, I don't think it's fair or reasonable to make any deduction from the above amount to take that into account. I say that mainly because the tax free cash for the B1 pension was less than it had been in June 2023, whereas the tax free cash from the B2 pension was greater than it had been in June 2023. Overall the difference in the total amount of tax free cash was a relatively small amount. So, to ensure that the calculation of loss is as straightforward as possible I don't propose to make any deduction for this amount. I have however taken this into account when thinking about the overall compensation Mrs M should receive for distress and inconvenience. I think that's fair and reasonable.

Lost Investment Growth on the Q account

Mrs M says she thinks she may have lost out on investment growth because of the delay transferring her pensions to the Q account. As I've mentioned above I think Gemini was only responsible for delays regarding the B1 and B2 pensions. So, to put matters right, I think Gemini should be required to:

- *Calculate how much Mrs M's account with Q would have been worth, as at 4 November 2023, had the residual amounts (i.e. after deduction of tax free* *cash) from the B1 and B2 pensions been transferred into it on 10 June 2023 instead of 21 September (B2) and 3 November (B1).*

When making this calculation Gemini should use the actual amounts (after deduction of the tax fee cash) which would've been transferred to Q on 10 June 2023. It should assume that there would be no difference to the date that the J pension was transferred into the Q account or the amount that was transferred.

Gemini should then compare this value to the actual value of the Q account on 4 November 2023 – based on the actual amounts transferred. If the value of the Q account is greater, Mrs M would not have suffered any financial loss and no additional action would be required.

If the value of the Q account on 4 November 2023 is less than it would have been had there been no delays, Gemini should pay an amount into Mrs M's account with Q which is:

- *The amount of the difference; plus*
- *8% simple interest per annum* on this amount from 4 November 2023 until the date when the payment is made into the Q account.*

If Gemini is unable to pay the compensation into Mrs M's pension plan, it should pay that amount direct to her. But had it been possible to pay into the Q account, it would have provided a taxable income. Therefore the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mrs M won't be able to reclaim any of the reduction after compensation is paid.

- *The notional allowance should be calculated using Mrs M's actual or expected marginal rate of tax at her selected retirement age.*

- *It's reasonable to assume that Mrs M is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%.*

- *If either Gemini or Mrs M dispute that this is a reasonable assumption, they must let us know as soon as possible so that the assumption can be clarified and Mrs M receives appropriate compensation. It won't be possible for us to amend this assumption once any final decision has been issued on the complaint.*

**Income tax may be payable on any interest paid. If Gemini deducts income tax from the interest, it should tell Mrs M how much has been taken off. Gemini should give Mrs M a tax deduction certificate in respect of interest if Mrs M asks for one, so she can reclaim the tax on interest from HM Revenue & Customs if appropriate.*

<u>*Distress and Inconvenience*</u>

Mrs M has experienced substantial distress, upset and worry as a result of the delays which happened here. She wasn't able to repay her mortgage within the timeline she originally intended and her plans for her retirement were significantly disrupted when she had to borrow additional funds to cover the ongoing mortgage payments and her *day to day living expenses. She also had to borrow from a family member – which would have added to her distress, inconvenience and embarrassment.*

I can see that Mrs M had to become personally involved in trying to progress matters at the time because of the distress and worry she was experiencing. The impact of the delay lasted over several months.

Gemini offered to pay Mrs M £200 for distress and inconvenience. Our investigator thought this wasn't enough. She thought £700 was fair and reasonable. Mrs M has suggested a figure of £1,000.

Having thought about everything including our guidelines for awards for distress and inconvenience, I've provisionally decided that £700 is fair and reasonable compensation for the substantial distress upset and worry Mrs M experienced here.

My provisional decision

For the reasons given above my provisional decision is that I intend to uphold this complaint about Gemini Wealth Management Limited.

I intend to require Gemini Wealth Management Limited to take the actions I've set out below to resolve this complaint:

- *pay Mrs M 8% simple interest per annum* for the delay in payment of the tax free cash from her B1 and B2 pensions and also pay her 8% simple interest per annum* on the additional borrowing (£10,000) over a five month period. I haven't included the borrowing from a member of her family in this amount.*

  I've set out below how I've provisionally decided the above amount should be calculated:

  A x 8% simple interest per annum x 5 months*
  Plus
  B x 8% simple interest per annum x 3 months*
  Plus
  C x 8% simple interest per annum x 5 months*

  Where:
  A is the tax free cash from the B1 pension that would've been paid in June 2023

  B is the tax free cash from the B2 pension that would've been paid in June 2023

  C is the total amount of additional borrowing from Mrs M's mortgage provider (£10,000).

- *Calculate how much Mrs M's account with Q would have been worth, as at 4 November 2023, had the residual amounts (i.e. after deduction of tax free cash) from the B1 and B2 pensions been transferred into it on 10 June 2023 instead of 21 September (B2) and 3 November (B1).*

  When making this calculation Gemini should use the actual amounts (after deduction of the tax fee cash) which would've been transferred to Q on 10 June 2023. It should assume that there would be no difference to the date *that the J pension was transferred into the Q account or the amount that was transferred.*

Gemini should then compare this value to the actual value of the Q account on 4 November 2023 – based on the actual amounts transferred. If the value of the Q account is greater, Mrs M would not have suffered any financial loss and no additional action would be required.

If the value of the Q account on 4 November 2023 is less than it would have been had there been no delays, Gemini should pay an amount into Mrs M's account with Q which is:

- *The amount of the difference; plus*
- *8% simple interest per annum* on this amount from 4 November 2023 until the date when the payment is made into the Q account.*

If Gemini is unable to pay the compensation into Mrs M's pension plan, it should pay that amount direct to her. But had it been possible to pay into the Q account, it would have provided a taxable income. Therefore the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mrs M won't be able to reclaim any of the reduction after compensation is paid.

- *The notional allowance should be calculated using Mrs M's actual or expected marginal rate of tax at her selected retirement age.*

- *It's reasonable to assume that Mrs M is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%.*

- *If either Gemini or Mrs M dispute that this is a reasonable assumption, they must let us know as soon as possible so that the assumption can be clarified and Mrs M receives appropriate compensation. It won't be possible for us to amend this assumption once any final decision has been issued on the complaint.*

- *Pay Mrs M £700 by way of compensation for the distress and inconvenience she experienced as a result of what happened here.*

**Income tax may be payable on any interest paid. If Gemini deducts income tax from the interest, it should tell Mrs M how much has been taken off. Gemini should give Mrs M a tax deduction certificate in respect of interest if Mrs M asks for one, so she can reclaim the tax on interest from HM Revenue & Customs if appropriate.*

Mrs M responded to my provisional decision. By way of summary she said:

- Her claim was not just about a loss in interest. She had experienced capital loss too and Gemini should be required to reimburse the full amount of capital and interest lost. There was an increased mortgage balance as a result of what happened – plus associated interest and losses.
- She'd experienced significant distress. The figure of £700 for distress and inconvenience was not adequate compensation.
- Any compensation should be either paid directly into her bank account so that it can be applied against her mortgage balance or alternatively paid into her pension

account with Q. If the compensation was paid into her account with Q, to ensure it was treated as a gross payment and to prevent further diminishing of the redress amount the calculation of 20% tax and Gemini's fees should be added.

Mrs M also referred our service to a recent decision by another Ombudsman service which concerned a complaint about a delayed pension transfer. Mrs M said this case illustrated that it wasn't acceptable for her to provide the offset of losses she'd incurred (which were over £20,000) by using her own pension funds.

Gemini also responded to my provisional decision. It accepted the decision and provided a calculation of losses based on what I'd said in my provisional decision. The calculation was sent to Mrs M for comment.

Mrs M said that the calculation showed that Gemini had offset its error with the pension transfer values. She said this did not negate the financial hole which had been created when she did not have the funds she was entitled to in June 2023. She reiterated that she did not accept the proposed resolution of her complaint.

So, I now need to make my 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.

I'd just point out at the outset that I've considered all of the information that's been provided here including the detailed spreadsheets which Mrs M sent to us setting out the costs and losses she says she's incurred.

However, although I know it will disappoint Mrs M I haven't changed my view, or the reasons for my view, about how this complaint should be resolved. I'll explain why:

Gemini did cause a delay here. As I said in my provisional decision, both the B1 and B2 pensions should've been paid in June 2023. There was a delay of around five months in the payment of the B1 pension and a delay of around three months in the payment of the B2 pension. Gemini is responsible for any financial losses which Mrs M suffered as a result of that delay.

Mrs M submits that her loss includes the amount of capital she raised by way of additional borrowing. However, as I explained in my provisional decision, the reason why she decided to take increased borrowing was because most of the "additional resources" she thought would be available to pay down her mortgage early hadn't been released. But she wasn't ultimately deprived of those additional cash resources. She did subsequently receive the tax free cash she was entitled to and the residual pension amounts were paid into her account with Q - and was available for future drawdowns. That's why I said I didn't think it was fair or reasonable that Gemini should have to pay her the capital sums she borrowed or the repayments of capital she made to her mortgage account during the period of the delay. I remain of that view.

I also remain of the view that it's fair and reasonable to require Gemini to compensate Mrs M for the additional costs she incurred as a result of its delay. And I think it's fair and reasonable for that calculation to be made by requiring Gemini to pay Mrs M 8% simple interest per annum* on the amount of the tax free cash on the B1 and B2 pensions she would've received in June 2023 - but for the delay. I did not propose there should be any offsetting used in the calculation and I remain of that view.

I also thought that Gemini should be required to calculate how much Mrs M's account with Q would have been worth, as at 4 November 2023, had the residual amounts (i.e. after deduction of tax free cash) from the B1 and B2 pensions been transferred into it on 10 June 2023 instead of 21 September (B2) and 3 November (B1). The purpose of this calculation was to determine whether the amount in the account with Q would've been greater at 4 November 2023, had there been no delay. If it would've been greater, had there been no delay, Mrs M would've suffered a financial loss. However, if that was not the case, she wouldn't have suffered a financial loss as regards the value of her account with Q.

Mrs M has commented on the proposed method of redress - specifically as regards any redress payable into her account with Q. In my provisional decision, after taking everything into account (including matters such as tax) I set out how I thought the compensation should be calculated and paid. I'm satisfied, on balance, the proposed calculation of redress is fair and reasonable in all the circumstances that applied here. I've set out in my provisional decision the circumstances where I thought any part of the compensation should be paid into the account with Q. I've not changed my view concerning that.

Mrs M has referred to a decision made by another Ombudsman service in a different case. She accepts that the facts in that particular case are different to the circumstances that apply to her complaint. But she says the same principles should apply. She says Gemini shouldn't be entitled to offset any subsequent investment gains against the compensation payable for loss caused by the delay.

When thinking about whether a firm has acted fairly and reasonably we take into account the law, codes and good practice that applied at the time of the event. We decide each case based on the particular circumstances that apply to that case.

Having said that, I'd just comment that the overall value of Mrs M's B1 and B2 pensions increased in the period between June 2023 and the date when they were ultimately paid to her. So, it's not the case that the value of her pensions was greater in June than they were when they were paid to her. And, in any event, in my provisional decision I did not propose that Gemini should be able to offset the increase in value, between June 2023 and the dates when the B1 and B2 pensions were paid, against the compensation payable to Mrs M.

In my provisional decision I said that although, overall, the total amount of tax free cash paid to Mrs M was marginally higher than it would've been had the payments been made in June 2023, I didn't think it was fair or reasonable to make any deduction to take that into account.

There's also no indication that Mrs M would've changed the make-up of the investments in the account with Q had the B1 and B2 pensions been paid in June 2023 rather than the later dates. And I have not indicated that any investment decisions made by Mrs M after the funds were paid into the Q account should be taken into account when calculating her financial loss. So, I remain of the view that the calculation I have set out for the determination of financial loss is fair and reasonable.

Mrs M has also commented on the amount of compensation for distress and inconvenience. Further information is available on our website setting out what our service takes into account when deciding what amount of compensation is fair and reasonable overall.

As I said in my provisional decision when thinking about compensation for distress and inconvenience I took into account everything she'd told us about how the delay here had impacted her. I also took our guidelines for awards for distress and inconvenience into account. Having looked at everything again I remain of the view that £700 is fair and reasonable compensation for the substantial distress, upset and worry Mrs M experienced here.

So, having considered everything again, I've not changed my view about how this complaint should be resolved.

My final decision

For the reasons given above I uphold this complaint about Gemini Wealth Management Limited.

I now require Gemini Wealth Management Limited to take the actions I've set out below to resolve this complaint:

- pay Mrs M 8% simple interest per annum* for the delay in payment of the tax free cash from her B1 and B2 pensions and also pay her 8% simple interest per annum* on the additional borrowing (£10,000) over a five month period. I haven't included the borrowing from a member of her family in this amount.

  I've set out below how the above amount should be calculated:

  A x 8% simple interest per annum* x 5 months
  Plus
  B x 8% simple interest per annum* x 3 months
  Plus
  C x 8% simple interest per annum* x 5 months

  Where:
  A is the tax free cash from the B1 pension that would've been paid in June 2023

  B is the tax free cash from the B2 pension that would've been paid in June 2023

  C is the total amount of additional borrowing from Mrs M's mortgage provider (£10,000).

- Calculate how much Mrs M's account with Q would have been worth, as at 4 November 2023, had the residual amounts (i.e. after deduction of tax free cash) from the B1 and B2 pensions been transferred into it on 10 June 2023 instead of 21 September (B2) and 3 November (B1).

  When making this calculation Gemini should use the actual amounts (after deduction of the tax fee cash) which would've been transferred to Q on 10 June 2023. It should assume that there would be no difference to the date that the J pension was transferred into the Q account or the amount that was transferred.

  Gemini should then compare this value to the actual value of the Q account on 4 November 2023 – based on the actual amounts transferred. If the value of the Q account is greater, Mrs M would not have suffered any financial loss and no additional action would be required.

  If the value of the Q account on 4 November 2023 is less than it would have been had there been no delays, Gemini should pay an amount into Mrs M's account with Q which is:

  - The amount of the difference; plus

  - 8% simple interest per annum* on this amount from 4 November 2023 until the date when the payment is made into the Q account.

  If Gemini is unable to pay the compensation into Mrs M's pension plan, it should pay that amount direct to her. But had it been possible to pay into the Q account, it would have provided a taxable income. Therefore the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mrs M won't be able to reclaim any of the reduction after compensation is paid.

  - The notional allowance should be calculated using Mrs M's actual or expected marginal rate of tax at her selected retirement age. It's reasonable to assume that Mrs M is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%.

- Pay Mrs M £700 by way of compensation for the distress and inconvenience she experienced as a result of what happened here.

**Income tax may be payable on any interest paid. If Gemini deducts income tax from the interest, it should tell Mrs M how much has been taken off. Gemini should give Mrs M a tax deduction certificate in respect of interest if Mrs M asks for one, so she can reclaim the tax on interest from HM Revenue & Customs if appropriate.*

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 28 January 2025.

Irene Martin
Ombudsman