

The complaint

Ms H has complained about Ellis Bates Wealth Management Limited's handling of a transfer of pension benefits that resulted from pension sharing following her divorce.

What happened

I have previously issued a provisional decision regarding this complaint. The following represents excerpts from my provisional decision, outlining the background to this complaint and my provisional findings, and forms part of this final decision:

"In February 2023 Ms H met with an Ellis Bates adviser to discuss her pension arrangements. At the time she was going through a divorce, and as part of the divorce settlement it had been agreed that she would be receiving pension funds from her ex husband. These funds were held in a policy with a provider which I will call 'provider S'.

Ms H held two existing personal pensions herself, but that provider could not accept any transfers in, including where they resulted from pension sharing. Ellis Bates recommended that Ms H transfer her existing benefits to a new personal pension, to be arranged with another provider which I will call 'provider R'. It said this new policy had lower costs and greater flexibility. Ellis Bates also recommended that the pension sharing funds should be transferred into provider R's policy. Ms H accepted Ellis Bates' advice, and in February 2023 provider R's policy received Ms H's existing pension benefits.

Ms H's divorce was arranged in the Scottish courts. The terms of the pension share were contained in a Minute of Agreement ('the Agreement'), where it was confirmed that Ms H would receive a pension transfer of £25,228.89 from provider S's policy. To put the pension sharing into effect, the Agreement needed to be registered in the Books of Council and Session, and provider S needed to be given the pension sharing documentation within two months of the granting of the divorce. Ms H's divorce decree was finalised on 11 March 2024, meaning that provider S needed the relevant documents to implement the pension sharing by 11 May 2024.

Ms H's solicitors forwarded the divorce decree to Ellis Bates on 3 April 2024, and a signed copy of the Agreement on 4 April. Ellis Bates sent these on to provider R, who forwarded them on to provider S on 5 April. On 20 April provider S told provider R that the copy of the Agreement had not been registered in the Books of Council and Session, and that it must have sight of the registered document.

On 22 April Ellis Bates forwarded provider S's email to Ms H's solicitors and asked if it had a copy of the relevant document. The solicitors sent a copy of the Agreement on 23 April, but this was again not the registered version. I understand that Ellis Bates sent this on to provider S. On 7 May Ellis Bates asked provider S for an update, and the same day provider S responded saying that it did not yet have a copy of the registered Agreement. It said it needed to see the date the Agreement was registered in the Books of Council and Session.

Ellis Bates emailed provider S on 10 May, commenting that the relevant document had already been provided. It attached the email and document previously sent by the solicitors on 23 April.

The next correspondence that we appear to have been provided with is from 28 May, when the solicitors emailed Ellis Bates with a copy of the Agreement. In response Ellis Bates told the solicitors and Ms H the same day that this was the same form that had been sent multiple times, and it asked for the Agreement signed off by the Books of Council and Session.

Shortly afterwards I understand that the registered Agreement was sent by the solicitors to Ellis Bates, and this was then forwarded to provider S at the end of May 2024. However this had been received by provider S after the two month deadline following the divorce decree had expired on 11 May 2024. In June 2024 Ellis Bates therefore told Ms H that she would need to apply for an extension to the deadline if the pension sharing was to be put into effect, and this would need to be actioned by a solicitor. Ms H complained to Ellis Bates that it had failed to ensure the pension sharing had been carried out in a timely fashion, within the deadline required.

In response Ellis Bates stated that it had regularly chased for the finalised divorce papers, but it said Ms H's solicitors had not supplied the correct documents until after the deadline of 11 May 2024. It commented that it had done everything it could to progress matters.

Unhappy with Ellis Bates' stance, Ms H brought a complaint to this service. She stated that she'd used the services of Ellis Bates to deal with all pension related matters that had arisen as a result of her divorce, including ensuring the pension sharing was implemented. However because she'd now had to request an extension from the Scottish courts so that the pension sharing could still be enacted, she'd had to use the services of an experienced lawyer. And Ms H said there was no guarantee that the extension would be granted.

Ms H commented that Ellis Bates had not shown an awareness of Scottish law deadlines for pension sharing, and that it had chased for documents when it did not know exactly which documents were required. She said that there was an obligation on Ellis Bates to know what was required in order for provider S to process the pension sharing. Ms H said that the delay in finalising the pension sharing was preventing her moving on from her divorce, causing her unnecessary distress and worry that she might not receive the pension share amount of around £26,000. She asked that Ellis Bates cover the cost of the specialist lawyer fees that related to the deadline extension request to the courts, and also compensate her for the pension sharing amount if the extension request failed.

After we received Ms H's complaint, it was confirmed by both parties that the court extension had been successful and that the pension sharing amount had been transferred from provider S to provider R.

Ms H provided copies of invoices from the lawyer who'd dealt with the court extension request that totalled £1,950.60. She also highlighted that Ellis Bates had charged her £756.87 as a fee relating to the advice it had provided on the pension sharing amount. Ms H commented that because the 11 May 2024 deadline for enacting the pension sharing had been missed, in her view it was not reasonable for Ellis Bates to charge the £756.87 fee.

Our investigator upheld this complaint in part. He stated that on 20 April 2024, Ellis Bates was made aware that provider S needed the registered version of the Agreement. The investigator said that Ellis Bates was providing a service to Ms H to implement the pension sharing so that its advice to transfer these funds to provider R could be carried out. In doing so, his view was that Ellis Bates should have noticed that the document it had received from

Ms H's solicitors after 20 April was the same unregistered copy of the Agreement that it had previously been sent. The investigator said that Ellis Bates should reasonably have queried this with the solicitors at this time.

The investigator said that Ellis Bates had again been told by provider S on 7 May that it had not received the registered Agreement, but it had again then sent provider S an email from the solicitors with the same incorrect document. The investigator's view was that Ellis Bates should have told the solicitors that the document it was providing was incorrect earlier than it did, on 28 May. Had Ellis Bates done this after receiving provider S's 7 May email, the investigator considered it likely that provider S would have been sent the registered version of the Agreement by 11 May deadline for enacting the pension sharing.

The investigator concluded that Ellis Bates' actions were unreasonable and had caused Ms H to incur additional legal fees. But because Ms H's solicitors sent the unregistered Agreement on several occasions, the investigator said that Ellis Bates should not be required to compensate Ms H for all the legal fees she'd incurred. Instead he proposed that it pay Ms H 50% of the £1,950.60 legal fees, or £975.30, plus interest covering the period since each invoice was paid. He also proposed that Ellis Bates pay Ms H £350 compensation for unnecessary distress and inconvenience she'd experienced as a result of its actions.

With regard to the £756.87 fee Ellis Bates had charged Ms H, the investigator did not consider this should be refunded, on the basis that it related to work done by the business to advise and arrange the transfer of the pension sharing amount.

Ellis Bates did not agree with the investigator's findings. It commented that Ms H's solicitors had "continually sent us the wrong legal documentation". It said that it is an intermediary and not a lawyer, and in its view it had carried out its role correctly. Ellis Bates indicated that it should not be blamed for the solicitors sending incorrect documents, or the fact that it had not spotted an error with these documents.

Ellis Bates said that it had been chasing the solicitors for more than a year relating to progress with the pension sharing, and it suggested that the solicitors had not engaged with it or supplied information in a timely way. It did not accept that it bore any responsibility for the 11 May 2024 deadline being missed.

Ms H commented that Ellis Bates had agreed to implement the pension sharing but had failed to do so, and had not shown an understanding about the documents that were required under Scottish law. In terms of Ellis Bates' comments that it had been chasing her solicitors for progress for over a year, Ms H said that the divorce decree was only signed in March 2024. She stated that Ellis Bates were being paid for arranging the pension sharing transfer, whereas her solicitors had no formal responsibility for this.

Ms H's view was that if Ellis Bates had correctly arranged the pension sharing, she would not have incurred specialist lawyer fees, and would not have suffered distress in the course of arranging the court extension to the pension sharing deadline. She suggested that Ellis Bates should pay her for the full cost of the lawyer fees, and that only 50% of the £756.87 fee for its services should be payable.

In light of the parties' responses to the investigator's view, this complaint was referred for review by an ombudsman.

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.

When Ms H met with Ellis Bates' adviser in February 2023, the Financial Planning Report recorded that this was to discuss Ms H's pensions following confirmation that she'd be receiving a pension share from her ex husband after her divorce. One of Ms H's objectives was to find a suitable plan to invest the pension sharing funds. Ellis Bates recommended that these be moved into a policy with provider R. In my view it is clear that as part of advising Ms H to follow this course of action, Ellis Bates also agreed to help arrange for the pension sharing funds to be transferred to provider R.

Ellis Bates knew, or ought reasonably to have known, that Ms H's divorce was being actioned through the Scottish courts, and therefore it should also reasonably have known that it was subject to Scottish law. Ellis Bates has pointed out that it is not a legal firm. I also note that in an email to Ms H on 17 June 2024, Ellis Bates said that it tends to deal with pension sharing in England, it wasn't aware of pension sharing deadlines, and "we only process pension transfers and advise on them." However, in order to ensure the pension sharing took place successfully, I consider that Ellis Bates needed to understand the essential elements of how pension sharing is conducted under Scottish law. In my view on balance this would include knowing which documents were required by pension providers in order for funds to be transferred under a pension sharing arrangement that was subject to Scottish law.

Ellis Bates was provided with Ms H's divorce decree, and then the signed Agreement, by her solicitors on 3 April and 4 April 2024 respectively. Ellis Bates sent these to provider R on the day it received them. Like the investigator, I consider it was reasonable for Ellis Bates to send these documents on to provider R at this time, as it looked to progress the transfer of the pension sharing amount.

However on 20 April provider S emailed provider R saying:

"The copy of the Minute of Agreement has not been registered in the Books of Council and Session. Before we can give effect to the pension sharing we must have sight of the registered document. Can you please forward a copy of this document."

It's not clear to me exactly when Ellis Bates was forwarded this email, but it had received it by 22 April, because on this date it sent it to Ms H and her solicitors. Ellis Bates asked if the solicitors had a copy of the registered Agreement. As I explained above, my view is that in advising on and arranging the pension sharing, Ellis Bates should reasonably have understood what documents were required to complete this transaction. But even if that were not the case, provider S's email on 20 April made it clear to Ellis Bates what was needed to arrange the pension share. Key to completing the transfer of funds was that provider S required the registered Agreement.

With that in mind, my view is that when Ms H's solicitors sent another unregistered version of the Agreement on 23 April, Ellis Bates should have clarified with the solicitors at that time that a registered copy was required. The fact that this was essential to successfully completing the transfer of the pension sharing funds was emphasised again in provider S's email to Ellis Bates on 7 May, in which it said:

"we have not yet received a copy of the registered minute of agreement...we must have sight of minute of agreement which shows the date it was registered in the books of council and session."

On 28 May, Ellis Bates did inform the solicitors that the document it was providing was not the required registered Agreement. This resulted in the solicitors forwarding the correct document shortly afterwards. However by this time, the 11 May deadline for enacting the pension sharing had passed. In my view, Ellis Bates should reasonably have noticed on 23 April that the document that the solicitors had sent it was not the registered Agreement, and should have requested that it forward the correct document. Had it done so, on balance my view is that the pension sharing would have been effected before the 11 May deadline, and Ms H would not have needed to apply for a deadline extension.

In terms of determining whether Ms H was caused any financial detriment by Ellis Bates' handling of this matter, I appreciate that extending the deadline for the pension sharing required Ms H to seek legal assistance, and that was not something that Ellis Bates could assist with, meaning that the timescale for this was out of its control. However in terms of the legal fees of £1,950.60 that Ms H incurred when seeking the deadline extension, it seems reasonable to me that she sought specialist legal help to do this, and I note that Ellis Bates told her that she would need to use the services of a solicitor.

The investigator's view was that Ellis Bates should be required to cover 50% of Ms H's legal fees, taking into account that her solicitors sent Ellis Bates the unregistered Agreement on several occasions. We do not have the power to consider the acts and/or omissions of Ms H's solicitors, as they do not fall under this service's jurisdiction. But that aside, in this complaint I need to consider the actions of Ellis Bates in the course of it advising on and arranging the transfer of the pension sharing funds.

Having done so, my view as explained above is that from 23 April, Ellis Bates should have realised that it was not being provided with the registered Agreement. Based on what provider S had told it, Ellis Bates should then have asked the solicitors for the correct document, in order to allow the pension sharing to be carried out. Had Ellis Bates done so, in my view it is more likely than not that the 11 May deadline for the pension sharing would not have been missed, because the correct document would have been supplied to provider S before the deadline expired. By failing to take appropriate actions to assist in arranging the pension share, I consider Ellis Bates caused Ms H to incur the legal costs seeking a deadline extension. My current view therefore is that Ellis Bates should be required to compensate Ms H by paying her the full legal costs of £1,950.60 that she was charged, plus interest.

I also consider that Ellis Bates' failures identified when arranging the pension sharing caused Ms H unnecessary distress and inconvenience. She was concerned that with the 11 May deadline having been missed, she might not receive the pension sharing funds at all. Ms H was also put to the trouble of engaging a specialist lawyer to apply for the deadline extension, and she has explained that this was at a time when she was seeking to finalise her divorce settlement and move on from what she has described as an extremely stressful situation. Overall my view is that the proposed compensation of £350 for distress and inconvenience caused is fair, taking into account awards made by this service on complaints with similar circumstances.

Ms H has asked that Ellis Bates refund her 50% of the £756.87 fee she paid it relating to its advice about pension sharing, in light of the 11 May 2024 deadline being missed. I note what Ms H has said about this fee, but my view on balance is that Ellis Bates should not be required to reimburse it, in full or in part. That's because whilst I consider Ellis Bates' actions relating to obtaining the relevant documents for the pension sharing caused the deadline to be missed, the £756.87 fee covered both advising on and arranging the process for the pension sharing funds. Overall, I consider that compensating Ms H in full for the legal fees she's incurred sufficiently compensates her for the financial detriment Ellis Bates' actions have caused her."

Responses to my provisional decision

Both Ms H and Ellis Bates accepted my provisional 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, and taking into account the replies to my provisional decision, I do not consider that I have reason to alter the conclusions reached in that provisional decision.

My final decision

My final decision is that I uphold this complaint, and require Ellis Bates Wealth Management Limited to carry out the following actions:-

- Pay Ms H compensation equivalent to the legal fees she incurred, totalling £1,950.60, when she applied for an extension to the deadline to enact the pension sharing. The fees were incurred over a number of months. Ellis Bates Wealth Management Limited should add simple interest to the compensation at 8% per annum (*) to each invoice amount from the date it was paid to the date of settlement.
- Pay Ms H £350 to compensate for distress and inconvenience caused to her.

Ellis Bates Wealth Management Limited must pay the compensation within 28 days of the date on which we tell it Ms H accepts my final decision. If it pays later than this it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% per annum (*) simple.

* If Ellis Bates Wealth Management Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Ms H how much it's taken off. It should also give Ms H a tax deduction certificate if asked for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 22 August 2025.

John Swain
Ombudsman