

The complaint

Mr T has complained that Rothesay Life plc (Rothesay) has overpaid his pension benefits and is now asking him to repay.

What happened

The investigator set out in her view what had led up to Mr T's complaint. I don't think it's disputed and so I've largely repeated here what the investigator said.

In March 2022, as part of a Pension Sharing Order (PSO), Mr T's former pension scheme administrators paid 61.12% of the cash equivalent value (CEV) of Mr T's scheme benefits to his ex-wife.

In March 2022 the scheme administrators began the process of transferring certain pensions to Rothesay, as part of a buyout the scheme had arranged with Rothesay.

In March 2023 Rothesay wrote to Mr T confirming it was now responsible for administering and ultimately paying his pension benefits.

In September 2023 and July 2024 Rothesay provided Mr T with pension benefit quotations. In August 2024 Rothesay paid Mr T £106,233.94 tax-free cash and started an annuity for £13,511.04 net pa.

In April 2025, as part of a routine audit, Rothesay identified that it had overpaid Mr T's tax-free cash and his annual pension, as follows:

	Paid	Correct payment
Tax-free cash	£106,233.94	£41,229.87
Annuity 2024/2025	£13,511.04 net pa	£5,238.00 net pa

Rothesay asked him to repay £64,924.07 for the tax-free cash and £8,940.68 regular income payments so, in total, £73,864.75.

Mr T complained that Rothesay ought to have checked the figures. He'd made life changing decisions about his retirement so this was a devastating discovery which has caused him financial hardship. He didn't think it was fair for Rothesay to ask him to repay the overpayments. He said that during at least one telephone call he'd asked if the quotations took the PSO into account.

In response, Rothesay stated that the information the previous scheme administrators sent it following Rothesay's take over, didn't include the deduction of the 61.12% for the divorce settlement (PSO) and that Rothesay had relied on the figures provided by the previous scheme administrators to be correct, so it wasn't their error. Mr T had received a benefit quotation, prior to the divorce, which showed an annual pension of £19,786 pa. But, since the pension benefits quoted in 2024 were £21,728 pa or £15,933 pa after taking tax-free

cash, he ought reasonably to have expected a substantially reduced pension income, given that he was only entitled to 38.88%.

Rothesay accepted Mr T couldn't reasonably be expected to be familiar with the workings of final salary pensions, but since, as Mr T maintains, he called to check the quotes were correct, this shows he likely suspected the payments were wrong but did nothing more. However, Rothesay couldn't find any calls where Mr T mentions a PSO. But, by way of an apology for the distress and inconvenience caused to Mr T, it offered him £1,000. It stated that this may be deducted from the overpayment and that, if Mr T could provide evidence of his financial position, it may arrange a payment plan.

Mr T referred his complaint to this service. It was considered by one of our investigators. She said that, legally, money paid by mistake is usually recoverable. But the recipient of an overpayment may have a defence to repaying in part or full. The main defence is change of position. For that to succeed, the recipient has to show that they spent money they wouldn't otherwise have done and which can't be recovered. Mr T couldn't have known that an error had been made and that he wasn't entitled to the payments.

The investigator set out the information Mr T had before and after his divorce. Mr T's annual pension was higher after 2022 than before. But the transfer values were less. Mr T had said, since the transfer values were less than pre-divorce, he believed that the new figures reflected the PSO. In terms of the income being the same, he assumed that was because rates were better.

Rothesay had explained in its final response letter that, because Mr T had a final salary pension, there was no pot of money as such and the transfer values are notional. Mr T maintains he wasn't aware of this distinction at the time. However, he recalled that the CETV value, pre-divorce, was about £700,000. So, by his reasoning, if this figure was reduced by the 61%, it would mean a transfer value in the region of £273,000. Notwithstanding that the transfer value could change, the figures provided in 2023 and 2024 were markedly different. Even if he mistakenly believed the transfer values were indicative of his benefits, the annual pension figures were more or less unchanged, from £19,786 quoted before and about £21,000 after the PSO. It would be unreasonable to think that this included a reduction of 61.12%, particularly as Mr T was aware he had a final salary pension.

Mr T says he called Rothesay to ask if the figures were '*after the pension split had been applied, after the divorce*'. The investigator had listened to several calls, but none mentioned this question. Mr T recalls that the agent put him on hold and on return said that the figures provided were from the actuaries. It was unclear if Mr T had called the previous scheme administrators rather than Rothesay but the investigator thought it more likely he'd called Rothesay, as the only figures he was provided with post-divorce were from Rothesay. But unfortunately, Rothesay hadn't found this call. As Mr T had called to check his entitlement, and Rothesay allegedly said the figures were right, together with the consistent annual pension figures, the investigator thought, on balance, that Mr T was aware that the annual pension was more than he ought reasonably to have expected.

The investigator said Rothesay wasn't precluded from recovering the amount overpaid from Mr T. Rothesay had already calculated the amount of overpaid tax-free cash and annuity payments. If repaying was going to cause Mr T financial difficulties, a repayment plan could be arranged. Rothesay had already offered Mr T £1,000 for distress and inconvenience which should be increased to £2,000 which Mr T could choose to offset against the amount owed.

Mr T wasn't happy with the investigator's view. He said that after Covid he went from a five day week to a two day week earning £20,000 with a company car and pension to test if he

could survive on the pension figures quoted by Rothesay and dipping into his savings for unexpected expenses. He'd purchased a car for £22,800 so he'd got insurance and running costs to meet. He'd calculated that Rothesay's errors had left him out of pocket by about £60,000, based on a reduced pension for six years, or £120,000 based on his lost salary and employer pension contributions and the cost of the car plus other household expenditure.

He thought that merited more than a payment of £2,000. He said it was his fault he'd hadn't spotted that the pre and post PSO quotes were similar. But he wasn't a pension expert and he'd seen so many numbers quoted in connection with the divorce and afterwards covering fund, transfer and income values. Emotionally what should've been a happy time for him and his wife had been wrecked. £2,000 didn't put him in the position he'd have been in, but for Rothesay's errors.

Rothesay wasn't happy either. Amongst other things, it said the recommendations weren't in line with the outcome it had delivered and which was what the Pensions Ombudsman would expect. Rothesay said it had checked the information the previous scheme administrator had sent – it had all been held electronically following the buy out and it was all reviewed when quotes were sent. It wasn't reasonable to say that Rothesay should've obtained electronic and hard copy files from archive and reviewed them – the data had already been cleansed by the trustees and there was no reason to think that was necessary. That would impose a huge operational and administrative burden and it's not reasonable to say that the data received shouldn't be relied on due to the very small possibility of an unexpected error somewhere.

Rothesay didn't think it should be asked to pay a further £1,000 to Mr T when he had an outstanding balance of £72,864.75 and he'd made no proposal for reimbursement. Rothesay felt Mr T had known his benefits were wrong. Rothesay said it had never told him the quotes took into account the PSO.

The investigator considered what had been said but it didn't change her view. She told Mr T and Rothesay that the matter would be reviewed by an ombudsman.

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've reached similar conclusions to those of the investigator.

I accept that Rothesay, in providing quotations for Mr T and before putting his benefits into payment, did check and review the information which the former scheme administrators had provided. I also accept that the starting point is that the data provided by the former scheme administrators and trustees – and which had been the subject of data cleansing, as is usual in a buy out operation of this sort – should be accurate. But, if it's later discovered there was an error, a question might arise as to whether it should've been spotted earlier. However, the extent to which, if any, Rothesay was responsible for not identifying an error had been made, doesn't change the end result. There's no dispute that, no matter how it came about, Mr T's benefits were overpaid. So an error was made by Rothesay. It's a matter between Rothesay and the previous scheme administrators as to exactly where responsibility might lie.

I agree that, in principle at least, Rothesay is entitled to seek recovery of the overpaid amounts. Mr T might however have a defence to a claim for repayment. Any defence Mr T might have would be based on a change of position argument – that he'd received the overpayments in the reasonable belief that the amounts were correct and so the money was his to spend and, based on that, he'd made irreversible lifestyle and financial decisions.

I've looked at what information Mr T had, both before and after the PSO was made, to see what he'd have reasonably understood about the benefits he could expect to receive. It would've been apparent to him, as his ex-wife had been awarded a sizeable chunk of his pension, that there'd be a comparable impact in terms of what he'd get.

Before the divorce and the PSO, Mr T's pension was quoted as £19,786 pa (based on the benefits he'd accrued up to his date of leaving on 31 January 2012 and which were subject to increases in deferment). That figure didn't change after the PSO had been made. And, in September 2023 and July 2024, it increased to £20,931.04 pa and £21,728.68 pa. Mr T's position is that he didn't fully understand how a final salary pension operated. But the Pension Sharing Annex specifically refers to this particular pension arrangement in respect of which Mr T's ex-wife would get 61.12% of the Cash Equivalent Value (CEV). I don't see that Mr T could've reasonably believed, after the PSO had been made in March 2022, that his annual pension quoted the following year, in September 2023, and which showed an increase could be correct.

The quotation which Mr T received in July 2024 (and on which he based his decision to retire) was in line with the September 2023 quotation and showed his pension had increased further. The accuracy or otherwise of that quotation was clearly questionable. I think Mr T would've expected, following the PSO, to see a significant reduction to his annual pension. And, when that didn't materialise, realised that something might've gone wrong – the most obvious thought would've been that the figures hadn't taken the PSO into account.

The CETVs quoted were also problematic. About eighteen months prior to the PSO the CETV was £686,531.05. A few months after the PSO it went down to £165,243.68. That represents a reduction of about 76%, which isn't out of line with Mr T's ex-wife having been given 61.12% of his pension and allowing for a downward movement in CETVs generally. In 2023 CETVs did drop, due to the combination of rapid interest rate rises and higher gilt yields – that makes it cheaper for pension schemes to fund future benefits, hence CETVs will be lower. I don't expect Mr T to have known that. But, given the PSO, he'd have expected his annual pension and the CETV to have been lower than previously quoted. And the CETVs quoted in August and September 2023 were lower. But the CETV quoted in July 2024 was much higher – £432,636.23. I think that discrepancy was in itself enough for Mr T to have queried it. I don't think he could've reasonably expected his CETV to have increased by such a large amount in only about a year.

Mr T says he did query things, possibly more than once, and he was assured that what he'd been quoted was correct. Given that by then Rothesay had taken over, I think any call was likely to have been with Rothesay, rather than the previous scheme administrators. But, although several call recordings have been produced, none include a specific enquiry as to whether the figures took into account the PSO. Without that I don't think it would be fair to approach things on the basis that Rothesay did unequivocally confirm that the benefits quoted were correct. Even if there was another conversation which hasn't been located, we don't know exactly what was said and in what context. Mr T may just have sought and received an assurance in general terms that what he'd been quoted was correct.

All in all, I can't see that Mr T has a change of position defence. Or that it would be fair and reasonable to say that he should be able to keep the benefits paid to him in error. So I agree that Rothesay isn't precluded from seeking to recover the overpaid benefits from him. As the investigator pointed out, we can't make any order against Mr T. So I'm not going to say that Mr T must repay the overpayments. And, as the investigator said, if Mr T isn't in a position to return the overpayments immediately or doing so will cause him financial hardship, a repayment plan should be arranged depending on Mr T's circumstances and financial position. I'd expect Mr T to assist Rothesay by providing full details of his financial position.

Mr T has suffered considerable distress and inconvenience in terms of the disruption to his retirement plans and his financial position generally. His position is that compensation of £2,000 for an error which means he's got to repay over £70,000 is inadequate. Whereas Rothesay says that's in excess of the amount it would expect to pay – that is, the £1,000 offered and which Rothesay considers is in line with the Pensions Ombudsman's approach. But, as Rothesay will appreciate, that's a separate organisation with its own views as to what represents fair compensation in a situation such as this.

In terms of what this service might consider fair, I don't think £2,000 for distress and inconvenience is unreasonable here. It's within the range I'd expect to see in a situation such as this and where what's happened will have had a very considerable impact on Mr T. He took his benefits in August 2024 and it wasn't until the following year, in April 2025, that Rothesay discovered he'd been overpaid. The sums involved were very substantial, especially the overpaid tax-free cash. Rothesay said in its final response letter that notifying Mr T about the overpayment would've come as an unpleasant shock. I agree. I think he'll have been caused considerable distress and upset. I say that taking into account what I've said above – that he should've reasonably been aware something was amiss. But he'd been getting his payments for some months so it would've still have been very unwelcome news that there'd been a mistake after all and which meant his retirement plans would need to be revisited.

We say on our website that an award of over £1,500 and up to around £5,000 is appropriate if a mistake has had an extremely serious short term impact, especially if there are ongoing effects. I think that's broadly the situation here. Discovering he has to find over £70,000 to repay Rothesay is a very serious situation for Mr T to be in and there might be ongoing effects by way of a reduction to his income/capital over the period of any repayment plan with adjustments to his spending.

The investigator said it was up to Mr T if he wanted to offset the compensation for distress and inconvenience against the amount he has to repay Rothesay. She asked Mr T but, because he didn't accept the investigator's view anyway, he didn't say if he agreed to the £2,000 being set off. Rothesay has said it doesn't want to pay any more money to Mr T as he owes £72,864.75 and he hasn't made any proposal to reimburse Rothesay. But I think, to some extent, Mr T's position is understandable – while his complaint hadn't completed this service's process, there was always the chance that an ombudsman might disagree with the investigator and say that he shouldn't have to repay the money. But, now that I've made my decision, Mr T will know that isn't the case.

The next step is for him to reach some agreement with Rothesay. Mr T may decide to offset the compensation for distress and inconvenience but, if he doesn't want to do that, I'm not going to say that Rothesay can set it off. It's a payment to compensate Mr T for the distress and inconvenience he's actually suffered in consequence of the overpayment and my view is that it's fair for it to be paid to him, notwithstanding that he owes Rothesay money.

Putting things right

Rothesay should do what the investigator recommended. I understand that Rothesay has already amended Mr T's annual payments to stop further overpayments from arising. And calculated the amount of the overpaid tax-free cash and annuity payments. If repaying causes Mr T financial difficulty, a repayment plan should be arranged, depending on Mr T's assets, liabilities and affordability. Rothesay should pay Mr T £2,000 (less any sum that's already been paid and/or which Mr T agrees should be set off) for distress and inconvenience.

My final decision

I'm upholding the complaint in part. Rothesay Life plc must take the steps I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 8 January 2026.

Lesley Stead
Ombudsman