

complaint

Mr T complains that he was given unsuitable advice by Cheshire Trafford UK Limited (CT) to transfer deferred benefits from an occupational pension scheme (OPS) to a self-invested personal pension (SIPP).

background

Mr T had deferred benefits in an OPS from a former employer. At age 55 he wanted to start accessing his retirement benefits from the scheme and sought financial advice. In March 2015 CT recommended Mr T to transfer from his OPS to a flexible drawdown pension so that he could access a larger tax-free cash lump sum and access income more flexibly. He was also advised to use the services of a discretionary fund manager (DFM).

In 2019 Mr T complained to CT as he was unhappy with the advice he had been given. He said the costs of the SIPP and the risks of giving up guaranteed benefits in the OPS had not been fully explained. After CT rejected his complaint he referred his complaint to this service.

Our investigator upheld Mr T's complaint. He found that Mr T didn't need additional tax-free cash and given his limited investment experience he wasn't convinced Mr T required the services of a DFM which added additional costs. Mr T had a cautious attitude to risk and it was unlikely he could achieve the returns needed to match his OPS benefits.

So overall he didn't think the transfer was in Mr T's best interest and he asked CT to undertake a redress calculation in line with the pension review methodology, as amended by the Financial Conduct Authority in October 2017 and compensate Mr T accordingly if there was a loss.

Both Mr T and CT accepted the investigator's assessment in November 2019. CT explained that they had a contract with the previous owner of the firm to say he was liable for any business conducted before 2017 when the business was purchased, so they needed to liaise with him.

In January 2020 CT informed Mr T that they had outsourced the redress calculations to a third party. In May 2020, the redress was calculated as £98,823.61 if paid to Mr T directly. CT explained that their legal team prevented them from paying the redress until they were able to reclaim the funds from the previous owner.

The calculations were only valid for three months, so when a payment hadn't been made by August, CT requested updated calculations from the third party. A second report was issued on 20 October which calculated the redress as £94,886.27. The redress figure reduced because Mr T's new pension arrangement had since increased in value and he had taken more regular income from the plan that he would have received from his OPS scheme.

As CT still hasn't paid the redress, Mr T asked for an ombudsman's decision on his complaint, so it was referred to me.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I agree with the investigator's findings that the advice given to Mr T was unsuitable. As CT has already accepted these findings and taken responsibility for this complaint, I'm not going to comment on this in more detail.

The reason why this complaint hasn't been resolved yet is that the calculated redress hasn't been paid. I do understand that CT is trying to pursue the previous owner of the firm for the redress before they make payment to Mr T.

However, CT accepted the investigator's findings over a year ago and have committed to paying the redress. It's not fair to Mr T that internal proceedings with the previous owner lead to continued delays. The figures are calculated and so I don't think it's fair to delay redress payment any further.

The calculations are only valid for three months from the time they were presented to the consumer. So when the redress hadn't been paid three months after the first calculation in May, CT asked the third party for recalculated redress figures. I don't think this was unfair. They were following redress guidelines and using updated assumptions and interest as well as updated values for Mr T's pension was intended to ensure he wasn't disadvantaged. If the value in his pension for example had dropped since the calculation in May, then the redress figure would now potentially be higher. In this case, it turns out Mr T's pension has increased in value so that's one of the reasons the redress is lower.

I appreciate that Mr T feels CT should honour the first redress calculation because if CT hadn't delayed the payment, he would've got the higher sum several months ago. However, whilst I agree the delays were unreasonable, I think paying the updated sum is fair in the circumstances as it puts Mr T as close as possible in the position he would be in now if he hadn't transferred his pension. It also includes additional interest accumulated since the first calculations. Paying the higher sum now would be overcompensating him.

putting things right

For the reasons set out above I request CT to:

- Pay Mr T the sum of £94,886.27 as per their latest redress calculations.
- CT must pay the compensation within 28 days of the date on which we tell them Mr T accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

According to the relevant regulator's guidance on redress for unsuitable OPS transfer cases, redress calculations are valid for three months *from the date of issue to the consumer*. I'm not sure when exactly Mr T (or his representative) was provided with the latest calculations, but from emails I've seen it must have been between 26 October and 6 November 2020. So as I see it the calculations will lose validity at some point between the end of January and the beginning of February 2020. CT should pay Mr T before this.

However, if redress hasn't been paid within three months of Mr T receiving the calculations, I think for expediency no further calculation should be completed unless Mr T requests this. Before CT pays the redress they should ask Mr T if he would like

a new calculation. If he does, the result of the updated calculation should be paid to Mr T (whether it is lower or higher than £94,886.27).

Any late interest payment at 8% simple per year as set out above should be based on the compensation amount of £94,886.27.

my final decision

I uphold this complaint and ask Cheshire Trafford UK Limited to pay Mr T the compensation as 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 29 January 2021.

Nina Walter
ombudsman