complaint

Mr T complains Integrity Asset Management Limited (IAM) failed to transfer his deferred benefits from his occupational pension scheme into a Self-Invested Personal Pension (SIPP) which caused him a financial loss.

background

In 2016 Mr T consulted an advisor from Integrity Asset Management Limited (IAM) to review his pension arrangements. He was a deferred member of his employer's occupational pension scheme (OPS). Mr T obtained a Cash Equivalent Transfer Value (CETV) dated 1 November 2016 of around £893,500 from his OPS. This was guaranteed for three months, after which it would need to be recalculated. The discharge pack set out the OPS's requirements which had to be satisfied before the transfer could proceed.

Mr T (and his wife) met with Mr R a pension transfer specialist from IAM on 25 November 2016 to discuss the possibility of taking his benefits flexibly in retirement rather than be restricted to an annuity. He wanted to pass his pension savings to his children after his death, and perhaps use some funds to help them buy property. IAM's role was to assess whether the transfer from a defined benefit scheme was in Mr T's best interests, and if so, arrange the transfer to a suitable SIPP provider. At the time of IAM's appointment the CETV would expire in two months''' time (on 1 February 2017).

IAM engaged a firm of pension transfer specialists ("H") to obtain information from the OPS and produce an initial analysis, after which IAM would provide the final Transfer Value Analysis (TVAS) report meeting FCA requirements. IAM would send the completed paperwork to the SIPP provider which would submit it to the OPS before 1 February 2017, otherwise the CETV would need to be recalculated.

In late January 2017 IAM told Mr T the TVAS report wouldn't be available before the CETV guarantee date. So Mr R and H agreed in a phone call that transferring from the OPS was the only way to meet Mr T's objectives. Mr R met with Mr T on 27 January 2017 so the paperwork could be signed. Mr T said he went ahead reluctantly as he was warned transfer values had peaked, but he says he felt uncomfortable taking such a huge decision without seeing anything in writing.

The OPS transfer discharge pack listed the requirements which had to be met for the transfer to proceed. One of these was an "*Independent Financial Advisor Confirmation Form*" confirming Mr T had been provided with regulated financial advice for the purposes of section 48 of the Pension Schemes Act 2015. But when the time came to sign it, the actual form couldn't be found and there wasn't time to obtain a duplicate from the OPS. So IAM says it provided the SIPP provider with a letter on its headed paper to send to the OPS confirming it had provided the advice. IAM sent the completed paperwork to the SIPP provider by email and post on 30 January 2017 for them to forward to the OPS.

The OPS says it didn't receive the advisor confirmation letter in time, so on 2 February 2017 it advised the SIPP provider the CETV would be requoted. Mr T was told about the new CETV (of around £817,500) on 22 February 2017 and he agreed to proceed at the lower value. The transfer to his SIPP completed on 3 April 2017, without Mr T seeing the TVAS report, although he'd had a verbal discussion and had seen H's initial analysis (based on the higher CETV). This concluded the transfer was in Mr T's best interests, as it met his

objectives of maximising the amount of allowable tax-free cash and enabled him to take his benefits flexibly compared to his OPS.

Mr T was unhappy at the £76,000 loss, so IAM complained to the OPS saying it should honour the original CETV and to the SIPP provider for failing to pass on the advice confirmation letter to the OPS in time. Neither complaint was upheld. So in 2018 IAM complained on Mr T's behalf to the Pensions Ombudsman (PO) about the OPS and SIPP provider. The PO was satisfied the OPS didn't receive IAM's letter until after the guarantee date. But whether the SIPP provider had emailed the letter in time (or at all) was irrelevant as it didn't include IAM's FCA number, so didn't meet the OPS's requirements as set out in the discharge pack. The PO said it was IAM's responsibility to ensure the OPS's requirements were met, so the complaint wasn't upheld.

On receipt of the PO determination Mr T held IAM responsible for his loss. IAM replied that two months was an unrealistically short timescale in which to carry out the review of the transfer at a very busy time for pension transfers which also coincided with the Christmas holiday period. So it wasn't fair to hold it responsible for transfer not completing in time. The TVAS is an essential part of the transfer process, and IAM felt under pressure to produce a favourable analysis without having the usual amount of time in which to complete the work. And while they were ultimately able to recommend the transfer they shouldn't be held responsible for the loss, as a recalculated CETV could have gone in Mr T's favour. IAM felt the OPS requirements were unnecessarily stringent as the legislation doesn't require the completion of a particular form but simply confirmation the appropriate advice had been given, which its letter provided. While omitting its FCA number had been an oversight, IAM's headed paper confirmed it was authorised and regulated by the FCA and this could easily be verified. And the regulations don't require the advisor confirmation to be received by the OPS scheme prior to the deadline, as long as they were satisfied advice had been provided.

IAM disagreed with the PO determination but recognised it was binding on all parties. So in January 2019 IAM provided its final response to Mr T with referral rights to our service. To resolve the complaint IAM initially offered Mr T £37,960 (half the difference between the two CETVs), grossed up to £45,552 to be paid into his pension, and subsequently increased its offer on a commercial basis to £47,960 to be paid in cash. Mr T declined both offers and referred his complaint to this service.

One of our investigators upheld the complaint and said IAM should put Mr T in the position he'd be in had the transfer completed prior to the expiry of the original CETV. IAM disagreed saying the CETV had to be recalculated because the SIPP provider hadn't ensured the advice confirmation letter reached the OPS by the guarantee date. It felt it was "*unfair and prejudicial*" to hold IAM responsible for failures beyond its control.

As agreement couldn't be reached IAM asked for an ombudsman's decision.

Provisional findings

I issued a provisional decision on this complaint in December 2020, in which I agreed with the investigator's conclusions, but set out my reasoning in more detail. I've not reproduced the time line of events, as much of it is not in dispute.

In summary I said:

- This service can't comment on the PO determination or make findings against the trustees of the OPS or the SIPP provider, so the decision solely concerns the actions of IAM;
- Based on the evidence it's most likely the CETV had to be recalculated because IAM failed to meet the OPS's requirements in full, which included a compliant advisor declaration confirming the advice;
- IAM's letter of engagement describes the firm as "*pension transfer experts*" so should have been familiar with the legislative requirement to confirm financial advice had been given;
- Although IAM had been appointed one month in to the three-month guarantee period, and the Christmas holiday fell in the middle, I'd seen no evidence IAM had warned Mr T the transaction may not complete within the time period or that the CETV might need to be recalculated;
- IAM told Mr T the TVAS report wouldn't be available prior to the guarantee date expiring, but instead of warning Mr T the CETV may need to be recalculated, it had committed to get the transfer done within the deadline, arranging a telephone discussion with H to ensure the transfer was in Mr T's best interests;
- Mr T agreed to go ahead on that basis to secure the CETV, he didn't insist on delaying until the report was available;
- I couldn't say how the OPS's advisor declaration form was mislaid, but the OPS would have accepted a letter instead, so long as it contained the same information as its own form;
- The OPS discharge pack makes clear that all its requirements must be met in full if the transfer is to proceed, or the CETV would need to be requoted;
- The advisor declaration form required confirmation of three things, one of which is the advisor firm's FCA number which wasn't included in IAM's letter;
- The PO determination concluded the SIPP provider hadn't emailed the advisor declaration to the OPS, but it was IAM's responsibility to meet the OPS requirements;
- As this didn't happen I said on balance IAM was responsible for the CETV needing to be recalculated.
- While it theoretically could have gone in Mr T's favour, it actually hadn't, and IAM had told Mr T the CETV he'd been given was quite high, suggesting it was most likely to go down;
- So IAM was responsible for Mr T's loss, and I set out what it should do to put this right.

Responses to the provisional decision

Both parties responded to the provisional decision.

Mr T accepted my findings. IAM strongly disagreed, restating their position that the loss was due to the SIPP provider failing to forward the advisor declaration letter to the OPS on 30 January 2017 by email. Had they done that, the CETV wouldn't have needed to be requoted, so it's unfair to hold IAM responsible for communication problems between the SIPP provider and the OPS.

In support of its case IAM referred to another PO determination where a CETV had to be recalculated downwards, which was partly upheld against the provider rather than the financial advisor.

So the case had been passed back to me to issue a final decision.

my findings

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 while I've reviewed everything again carefully, including the additional information received from both parties, I see no reason to depart from my provisional conclusions. I'll explain why.

In coming to a fair and reasonable outcome, I'm obliged to consider the relevant regulatory framework, law and industry best practice. Pension transfers is a highly regulated area of advice and not all financial advisors are qualified to deal with this work, as Mr T discovered when he attempted to find a suitable advisor prior to appointing IAM. IAM's client services agreement stresses Mr R's expertise and experience in later life planning and reassures clients that IAM will "*implement the necessary arrangements including the undertaking of all legal, regulatory and compliance requirements".*

IAM's response to Mr T's initial complaint said they hadn't been given enough time to complete the work they would normally do to assess whether the transfer was in his best interests, as they were engaged one month into the guarantee period with Christmas in the middle. And it was a particularly busy period as transfer values were high. But I said I'd seen no evidence IAM had warned Mr T the timescale was too tight or that the CETV might need to be requoted.

As the deadline approached and H hadn't completed the TVAS analysis IAM could have told Mr T it was unlikely the transfer would take place within the guarantee date. And they could have refused to let Mr T proceed without seeing the written advice, particularly as their service introduction letter says:

Once all necessary enquiries, research and investigations are completed we will then be in a position to present our findings, conclusions and recommendations. Again these will be presented in writing with full supporting information and facts.

So instead of arranging an urgent discussion with H to ensure they were satisfied the transfer was the only way to meet Mr T's stated objectives, IAM should have said the transfer couldn't take place without it. Although I accept they acted with the intention of satisfying their client and to avoid the CETV needing to be requoted. IAM said the CETV could have gone in Mr T's favour, but I think if Mr C really believed it was more likely than not the requoted CETV would be higher and Mr T would be better off if he delayed slightly until the TVAS was available IAM wouldn't have rushed to meet the deadline. Particularly as strictly speaking their failure to provide the full analysis in writing including important considerations such as the critical yield breached the FCA's conduct of business rules (COBs).

So as IAM took the decision they would assist Mr T by doing what was necessary to get the transfer completed by the guarantee date despite its regulatory obligations, I think on a fair and reasonable basis Mr T was then entitled to receive the benefit of what they had agreed to do.

In other words it would be unfair on Mr T if IAM led him to think the transfer was going ahead within the deadline, and then when that failed to tell him they shouldn't have helped him anyway. While Mr T would likely have been very dissatisfied and complained if IAM told him the transfer couldn't proceed instead of agreeing to push it through, I'd be unable to criticise

IAM for refusing to act against the regulatory requirements, although I might have made an award for the poor service. But having committed to doing the transfer IAM must accept the consequences of it not completing in time, if IAM's actions or inactions were the reason the CETV needed to be requoted.

The advisor declaration form

Since the provisional decision I've seen a copy of the OPS transfer discharge pack and the covering letter dated 1 November 2016.Having reviewed this, I think it's most likely the advisor declaration form was included in the pack sent to Mr T. It's listed in the covering letter and I think Mr T would have noticed if it was missing, and so would IAM at the initial meeting on 25 November 2016. I don't think it's relevant to determine when or how it became mislaid between then and 27 January 2017 when the paperwork was completed, because the OPS was prepared to accept a letter in place of the form, so long as it contained the same information as their own form.

The OPS had to satisfy the requirements of Section 48 of the Pension Schemes Act 2015 (further expanded in The Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations 2015). These said that prior to a paying a transfer value of more than £30,000 an OPS must ensure its member has received regulated financial advice. So the authorised advisor must confirm:

- *Advice has been provided about the transfer*
- *They have the required permission under the relevant legislation to provide the advice*
- *The advisor firm's FCA authorisation reference number.*

I've looked at the OPS advisor declaration form from the pack, which is headed "*[OPS] FCA Authorised Advisor Confirmation Form*". Section 1 is pre-printed with Mr T's name and scheme member number. Section 2 is headed "*Advisor Declaration*" and is the part Mr R would need to agree to. It reads:

"*I confirm:*

1. I have permission under Part 4A of the Financial Services and Markets Act 2000, or resulting from another provision of that Act, to carry on the regulated activity in article 53E of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 to provide advice on the transfer of safeguarded benefits.

2. I have given advice to the member named above on the transfer of safeguarded benefits under the above plan to flexible benefits.

Section 3 is headed "*Advisor details*" and has three boxes for completion by Mr R which are labelled "*Name*", "*FCA Registration Number*" and "*Date*". At the bottom is a section for the OPS administration team to confirm the advisor name and FCA registration number have been checked against the FCA register. I think it's clear it was essential all the information in section 3 should have been included in IAM's letter for it to be an acceptable replacement for the form.

IAM admits omitting its FCA number was an "*oversight*" but I don't agree the OPS was "*unduly stringent*" in requiring all its requirements to be met. I think it was entitled to require the completion of its own advisor declaration form as set out in its requirements in the pack,

or to specify that the form must contain the same information to be acceptable. As pension transfer specialists IAM should have realised the need to include the firm's FCA number in the body of the letter, particularly as this information is not included in the footer of its headed notepaper. And while the OPS could simply have looked up IAM on the FCA register, the form (and the law) is clear that it was for the advisor to provide that information for the OPS to check.

The letter dated 30 January 2017 issued by IAM

I've seen a copy of the letter Mr R sent to the SIPP provider dated 30 January 2017. It's addressed to the SIPP provider, not the OPS, and is headed with Mr T's name and SIPP application reference number, rather than information relating to the OPS.

It reads *"I would like to confirm that [Mr T] has been advised by Integrity Asset Management Limited to transfer his retained [name of OPS] defined benefit pension scheme to [SIPP provider].*

I trust this is satisfactory, but please let me know should you require anything else at this time".

So it appears to be written to satisfy the SIPP provider that Mr T had received regulated advice, rather than as a replacement to the OPS advisor confirmation form. I think if IAM had intended the letter as a substitute for the missing advice confirmation form it would have been addressed to the OPS or made some reference to the OPS's and legislative requirements, even if it was first to be sent to the SIPP provider for onward transmission. And IAM would have included it to meet the OPS's requirements as set out in the transfer pack rather than only when asked for it by the SIPP provider.

This interpretation is supported by the PO determination. Point 7 of which says that on 30 January 2017 the SIPP provider was setting up Mr T's details on its system to request the transfer from the OPS. And it emailed IAM to say that as this was a defined benefit transfer "*it required a letter completed by the IFA confirming that advice had been given*". "It" in this context being the SIPP provider itself, rather than the SIPP provider was checking IAM had satisfied the OPS's requirements. The PO determination goes on to explain that a few hours later, in response to this email IAM sent the SIPP provider a letter and quoted the wording of that letter as above.

IAM may have thought its letter would satisfy both the SIPP provider's own requirement for confirmation that Mr T had received regulated advice before it was prepared to request the transfer from the OPS, as well as replacing the missing OPS advisor confirmation form. But if the SIPP provider had requested that letter for its own purposes, it makes sense it wouldn't have included it with the transfer pack sent to the OPS. The transfer pack was after all supposed to include the OPS's completed advisor declaration form.

IAM's position throughout has been the CETV was requoted due to the SIPP provider's failure to pass its letter confirming it had given Mr T regulated advice to the OPS. And it looks as though the SIPP provider did fail to pass on that letter. But it doesn't change the fact that it was IAM's responsibility rather than the SIPP provider, to ensure all the OPS's requirements were met. And that included a compliant advisor declaration form or a letter including exactly the same information. And IAM's letter to the SIPP provider didn't provide that.

The PO determination cited by IAM

I've read the PO determination provided by IAM in support of its position, but it doesn't change my mind on this complaint. The circumstances of the two cases are different in a crucial respect.

In the PO determination cited by IAM the CETV expired on 15 September 2018. The consumer's financial advisor had applied for the transfer online on 5 September 2018 and had sent "*all the requisite paperwork"* to the new provider by post the following day. But the new provider didn't forward it to the administrators of the ceding scheme until 20 September 2018, so the CETV had to be requoted. The determination made clear the new provider had everything it needed in good time - there's no suggestion the advisor declaration was missing, or the documentation was incomplete in any respect. The advisor had fulfilled their responsibilities and the new provider accepted responsibility for the failure, which is why it was required to compensate the scheme member.

But in Mr T's case Integrity submitted the transfer request on 30 January 2017, very close to the guarantee date, and it didn't include "*all the requisite paperwork*" as the OPS form was missing. And the letter it sent in its place wouldn't have met the OPS's requirements, even if it had been received on time. This was a failure on IAM's part, not the SIPP provider.

Conclusion

Having thought about everything carefully, I'm satisfied IAM's failure to ensure all the OPS's requirements were met prior to the guarantee date was the reason the CETV needed to be requoted, and so IAM is responsible for Mr T's loss.

So I uphold this complaint and require IAM to put Mr T as far as possible in the position he'd be in without the error, which would be to uplift his SIPP as if the transfer from his OPS had taken place on 1 February 2017 at the original CETV of £893,490.58.

So I IAM should:

- Obtain the current notional fund value of Mr T's SIPP as if the original CETV of £893,490.58 had been transferred on 1 February 2017 and invested in the same funds (value A);
- Obtain the current actual fund value of Mr T's SIPP (value B)
- Deduct B from A giving value C (the loss)
- Pay an amount into Mr T's SIPP to raise the current actual fund by value C, taking into account any charges and available tax relief;
- If paying into the SIPP is not possible, the loss should be paid to Mr T as a lump sum, first reducing it by 15%. (The loss to Mr T's SIPP would've been used to provide pension benefits, 25% of which would be tax free and the rest would have been taxed. I have assumed Mr T will be a basic rate taxpayer in retirement, so the 15% reduction reflects this).
- Provide the details of the calculation to Mr T in a clear, simple format.

my final decision

I uphold this complaint.

Integrity Asset Management Limited should put things right 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 25 June 2021.

Sarah Milne
ombudsman