

## The complaint

Ms J complains that Pi Financial Ltd delayed processing her defined benefit (DB) pension transfer. She says that because of Pi's actions, the transfer value that she was originally offered was then reduced in value by £118,536.

Ms J would now like Pi to recompense her for the reduced transfer value, as well as the lost investment growth and wider costs on those monies that she believes are attributable to their actions.

## What happened

In April 2022, Ms J had a meeting with an appointed representative of Pi to discuss her retirement planning needs after recently being made redundant from work. She wanted to explore moving her deferred DB scheme to a new personal pension and then extracting some of the tax-free cash to repay her mortgage and then fully retire from work. After a number of interactions, on 16 May 2022, Ms J committed to proceeding with the DB transfer and signed the paperwork to move her deferred pension. Pi then submitted what they thought was all of the necessary paperwork to the third-party DB pension administrator on the same day, ahead of the transfer value expiring on 22 May 2022.

Two weeks after submitting the transfer paperwork, Pi discovered that the DB administrator hadn't received the 'advice confirmation' letter that they said had been posted to them on 16 May 2022 with the other paperwork. The DB administrator claimed, therefore, that as all of their requirements hadn't been met, the cash equivalent transfer value (CETV) that Ms J had been offered, would need to be recalculated. Following the recalculation, the CETV that Ms J was then offered to move her DB pension reduced from £543,895 to £425,359, giving Ms J £118,536 less than she originally thought that she'd receive.

Despite the lower than anticipated transfer value, Ms J decided to still proceed with the transfer and several months later, her DB monies were moved to a new personal pension with Royal London. Unhappy with the reduced transfer value, Ms J initially complained to the DB administrator. In summary, she explained that she was unhappy that the new transfer value that they had offered was considerably less than the original. Ms J also explained that she didn't think it was reasonable that they had decided to write to her (via the postal system) rather than email her, two days prior to the CETV expiring, informing her that the 'advice confirmation' letter was missing. Ms J said that as she didn't receive that letter until 30 May 2022, she (or her adviser) were then unable to take any action to prevent the CETV expiring.

After considering Ms J's complaint, the DB administrator responded, saying that they weren't upholding her complaint. They also said, in summary, that they weren't able to honour the original transfer value because Ms J's adviser hadn't submitted the mandatory advice confirmation letter to them. They also said, *'the transferring scheme has no obligation to chase for missing paperwork'* and that's because, they say, all of their requirements are set out in the transfer pack that both Ms J and her adviser had a copy of.

Shortly afterwards, Ms J decided to formally complain to Pi. In summary, she said that she was unhappy that Pi had failed to ensure that the DB administrator had received all of the necessary paperwork ahead of the transfer value expiring. Ms J went on to explain that she wanted Pi to recompense her for the difference between the original transfer value that she was offered to what she eventually ended up with.

After reviewing Ms J's complaint, Pi concluded that they were satisfied they'd done nothing wrong. They also said, in summary:

- That they had submitted all of the necessary information that the DB administrator required ahead of the transfer value expiring.
- They explained that they didn't think the DB administrator had acted fairly because, Pi felt that when they'd discovered the 'advice confirmation' letter was missing, the DB administrator could have telephoned Ms J or themselves to let them know, rather than sending a letter two days before the transfer value would expire.
- Pi also said that Ms J was advised that the transfer value had expired and a new one had been requested. Had she wished, she could've asked for the recalculation to be stopped and didn't have to go ahead with the reduced, lower CETV.
- Pi went onto explain that they didn't believe Ms J had actually lost £118,535 because she could have stayed in the DB scheme should she have wished.

Ms J was unhappy with Pi's response, so she referred her complaint to this service. In summary, she said that were it not for the actions of Pi, she could have secured the original higher transfer value. She went on to explain that she'd originally planned to repay her mortgage with the tax free cash from the transfer and undertake some home improvements. Because of Pi's actions, Ms J explained that she'd had to extend her mortgage and had to pay a higher interest rate on her borrowing.

The complaint was then considered by one of our Investigators. He concluded that Pi hadn't treated Ms J fairly and it was likely that they'd not posted the 'advice confirmation' letter to the DB administrator, so they were responsible for Ms J missing the CETV deadline.

Pi, however, disagreed with our Investigator's findings. In summary, they said that given the DB administrator chose to write to Ms J by mail rather than telephone or email, resulted in the transfer value expiring in their view. They went on to say that as Ms J only received the DB administrator's letter (of 20 May 2022) on 30 May 2022, they'd not treated her fairly because they should have known that their letter would never have reached her before the transfer cut-off deadline. In addition, Pi stated that they felt prior to this service considering the complaint, the Pensions Ombudsman Service should be allowed to adjudicate on the complaint first.

Our Investigator was not persuaded to change his view as he didn't believe that Pi had presented any new arguments that he'd not already considered or responded to. Pi then asked the Investigator to pass the case to an Ombudsman to review that outcome.

After carefully considering the complaint, I issued a provisional decision on the case explaining that, whilst I was minded to agree with our Investigator's view that the complaint should be upheld - I wanted to add my wider thinking and I've altered the redress approach that Pi needs to take to put things right for Ms J.

What I said in my provisional decision:

*The purpose of my decision isn't to address every single point raised. My role is to consider the evidence presented by Ms J and Pi, in order to reach what I think is an independent, fair and reasonable decision based on the facts of the case. In deciding what's fair and reasonable, I must consider the relevant law, regulation and best industry practice, but it is for me to decide, based on the available information that I've been given, what's more likely than not to have happened. And, having done so, I'm upholding Ms J's complaint and it's largely for the same reasons as our Investigator. I'll explain why below.*

*Before I do, I should address Pi's contention that the Pensions Ombudsman Service should be allowed to adjudicate on this complaint first. Ms J is well within her rights to refer her complaint to this service and as I understand it, to date, she hasn't referred her concerns to the Pensions Ombudsman Service. Should she wish to refer her concerns to them at a later date, she is also entitled to do so, subject to their rules and conditions. However, I am satisfied that it is appropriate for me to consider Ms J's complaint in light of the concerns that she has raised, which are specifically levelled at the actions of Pi rather than the actions of other third parties, such as the DB administrator.*

*I can understand Ms J's concern at seeing the second transfer value that she was offered decrease. In complex transfers such as that of a DB scheme, there are several parties that need to be involved in the process, but it's important for me to say that this decision focuses solely on the actions of Pi, whom this complaint is against.*

*Allied to this, I should also explain that I have not reviewed the appropriateness of Pi's advice to transfer Ms J's DB scheme as that is not a concern that she has raised in her complaint to this service. Ms J's complaint focuses on the fact that the DB administrator didn't receive all of the paperwork they needed prior to the CETV expiring. When the new CETV was issued, it dropped in value. From what I've seen, what doesn't appear to be in any doubt here is that Pi knew full well what documentation the DB administrator required, and that included the signed 'advice confirmation' letter from them, prior to accepting the transfer request before 22 May 2022. Pi have stated that they posted the letter to the DB administrator, but the DB administrator have stated that they did not receive a copy of that letter.*

*The expectation for financial advice firms to submit an 'advice confirmation' letter, which is sometimes called an article 53E letter or section 48 declaration (S48), has long been a requirement of pension trustees. That letter is designed to ensure that consumers have taken professional advice from a suitably qualified pension specialist, prior to transferring their DB benefits. In addition, the letter provides the requisite disclosures from the adviser that pension trustees must receive prior to releasing the transfer monies.*

*I've looked closely at the timeline of events in this case. As the events are not disputed by either party, I don't intend to repeat that timeline here and rather I've focused on the key dates that I feel are particularly relevant.*

*The DB administrator issued the transfer pack to Ms J on 22 February 2022 – within that, it set out what documents needed to be submitted to them prior to the guaranteed transfer value expiring on 22 May 2022. And, as Ms J was paying Pi to provide the transfer advice, it was their responsibility to act in line with the Regulator's Principles, keep her informed and act in line with what Ms J would reasonably expect – or tell her if that's not possible. The end result of this is that the business, reasonably, could have and should have done more to secure the transfer in this particular case. And, having looked at the paperwork that the DB administrator sent, it seems to me that their requirements were clearly set out and also went on to warn that, without all of the necessary forms, they'd be 'unable to proceed with the transfer without this information'. That, in turn, would mean that the IFA would be running the risk of placing the consumer in a position where the CETV would expire, and consequently*

having to request a new transfer value from the trustees that could be lower than the original.

On 18 March 2022, Ms J contacted Pi, asking for advice on her retirement planning needs. Pi contacted her 14 days later (on 31 March 2022) and on 8 April 2022, they met with Ms J and completed a fact-find meeting with her. And, after undertaking their analysis of Ms J's circumstances, Pi reached a conclusion that a transfer was likely to be in her best interests.

It seems that Pi's adviser then sent Ms J's draft suitability report (which set out the reasons why the transfer was in her best interests) to their internal Pension Transfer Specialist (PTS) for sign off, on or around 19 April 2022. A number of iterations then followed until the PTS approved the final draft some 27 days later, on Sunday 15 May 2022, and the following day, it was forwarded to Ms J to review. That meant, it took Pi 39 days from the point that they completed the fact-find with Ms J to issue the finalised suitability report to her.

On 16 May 2022, Pi emailed the transfer request and discharge forms, a copy of Ms J's photo ID and a letter of authority to the DB administrator. In the same email, Pi explained that the S48 letter would follow shortly. Pi then say that they posted all of those documents along with a copy of the 'advice confirmation' letter to the DB administrator on the same day. Pi have conceded that they didn't email a copy of the S48 letter to the DB administrator, and say it was inserted within the envelope, along with the rest of Ms J's transfer paperwork.

On Wednesday 18 May 2022, Pi emailed Ms J, explaining that they had submitted the paperwork to the DB administrator and that they would telephone their helpline the following week to get an understanding of when they would be able to finalise the transfer. However, given that the CETV was due to expire only four days later (on Sunday 22 May 2022), I think Pi's approach here was problematic because, by the following week, the guaranteed date would have already passed so it wouldn't have allowed for any corrective action to be taken to preserve the original CETV. And I think it's more likely than not that, had they called the DB administrator to check they had everything they needed, the mistake would have come to light.

On 20 May 2022, the DB administrator spotted the S48 letter was missing and wrote a letter to Ms J, which she says wasn't received until 30 May 2022, over a week after the CETV had expired. The next day, the DB administrator received Ms J's 'advice confirmation' letter, but by this point, the CETV had expired. Pi say that they believe the S48 letter was sent but the DB administrator must have lost the letter. The DB administrator say that they received all of the other documents in the post from Pi but not the S48 letter. Pi haven't sent any evidence to back-up their claims that the DB administrator must have lost the S48 letter. Having thought about things, on the balance of probabilities, I think it's more likely than not that Pi didn't send the S48 letter in the post with the rest of the transfer paperwork. I say that because their email of 16 May 2022 stated that the document would 'follow shortly' and it seems that the DB administrator received all of the other documents in the post that Pi sent to them that day. And, in the absence of a supporting email from Pi to demonstrate that it was sent, I'm inclined to conclude that Pi never sent it. I also think Pi's email to this service backs up that contention because they've stated:

"I then checked Hightail\* (didn't know I could at first) and couldn't see {Pi's Paraplanner} had downloaded the S48 on 16/05 so I ask her again and she is now doubting herself as to whether she did that. We should have had a copy of the S48 sent in the post too from pi but I can't see that was ever received, if it was, we have posted that on to them".

\*Hightail is Pi's internal mail and messaging system.

*Had Pi emailed the S48 letter to the DB administrator, it wouldn't have mattered had it not been posted. And, according to Pi's own processes, they ordinarily email all documents to the scheme administrator to avoid such incidents happening, although it appears that in this instance, they didn't.*

*Having carefully considered the timeline from the point at which Ms J contacted Pi, to when they met with her to complete the fact-find and then to finalise the paperwork, I don't believe that in light of the CETV expiration date, they acted as promptly as they should have done. I say that because from the point Ms J contacted Pi for help with her retirement planning needs, allowing for an hour for Ms J to watch some educational videos, Pi took 22 days to eventually meet with her on 8 April 2022. It then took 11 days for the first draft suitability report to be crafted and then it took their internal compliance team 27 days to sign the suitability report off. From when the transfer paperwork was submitted, it only gave the DB administrator four working days to spot any problems. And from what I've seen of the various correspondence sent into this service, it seems that Pi was already of the view that the customer service levels provided by that specific DB administrator was lacking. So, by leaving the application to the final days of the CETV expiration deadline, I don't think that Pi acted with the due care, skill and diligence which the regulator expects.*

*From what I've seen, the issues of getting Ms J's transfer completed seem to have occurred within the later stages of the consumer journey. And, whilst delays towards the end of the process are still a reasonable possibility of getting things done, they have more of an impact than delays earlier on in the process, when hold ups don't matter as much. I think it's important to view the delays in that context because a two week delay earlier in the process (when Ms J was searching around for an adviser) isn't necessarily a critical factor in the scheme of things, whereas the same delay at the end of the process can be critical.*

*I believe that it was Pi's responsibility to give sound, timely advice, and it's also their responsibility to act with skill, care and diligence and to pay due regard to their customers' interests (which is the FCA's PRIN 2 rule). So, Pi had to give advice in good time (which I don't think they did), and thereafter the consumer reasonably would have expected Pi to act promptly in order to secure the transfer. But Pi delayed things by sending the transfer paperwork later than they could have done and when they did so, there was an important document missing - and they didn't follow up their submission with the DB administrator. Also, by their own admission, the business knew the deadlines and the fact that the advice to transfer was predicated to a certain extent on the CETV, so Pi should have known that they couldn't delay things. Ms J agreed to pay Pi an initial advice fee of £15,000 to facilitate the transfer – as long as Pi submitted all of the documents that the scheme administrator asked of it and prior to 22 May 2022, when the CETV offered to Ms J was guaranteed. And given that Pi were acting as Ms J's agent, they had a duty of care to ensure that all of the relevant documents were submitted on time and to the standard set out.*

*Whilst Pi can't be held liable for the delays of others, they were responsible for the consumer journey and, as I've already explained, I'm of the view that the reduced CETV is a direct consequence of Pi's failure to submit an advice confirmation letter to the DB administrator.*

*The list below is not a comprehensive list of the rules and regulations which applied at the time of Pi's advice to Ms J, but provides useful context for my assessment of Pi's actions here:*

*PRIN 2: A firm must conduct its business with due skill, care and diligence.*

*PRIN 6: A firm must pay due regard to the interests of its customers and treat them fairly.*

*COBS 2.1.1R: A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests' rule).*

### Summary

*So, it seems clear to me that were it not for the actions of Pi, Ms J would have secured the original, higher CETV value. And that's because, as I've already set out, Pi failed to submit the advice confirmation letter with the original transfer application, which they ought reasonably to have known was a requirement of the scheme trustees. It seems that there were delays in Pi issuing their suitability letter and they also could have submitted the transfer documents to the DB administrator sooner than they did, and had they done, the mistake would've likely been spotted sooner than it was. Finally, they then failed to obtain definitive confirmation from the DB administrator that all of the required documents had been submitted.*

*With all of this in mind, I think that Pi fell short of what is expected and its failures have resulted in Ms J missing her CETV expiry date. I'm therefore upholding Ms J's complaint and require Pi to put things right for her in the manner that I've set out below.*

### Responses to my provisional decision

After reviewing my provisional decision, Ms J responded, stating that she had nothing further to add.

Pi responded saying that they didn't agree with the provisional decision. They went on to say, in summary, that:

- Whilst they could evidence that the S48 letter was emailed to their adviser, they conceded their system didn't evidence that he had downloaded it. They did however say that they were able to evidence that a copy of the S48 letter was posted from their head office to the adviser's office on 16 May 2022. Pi shared an extract of their postal log as evidence that they had posted it to their adviser on 16 May 2022, and went on to say that would have then given adequate time for that original letter to then be posted by the adviser to the DB administrator before the CETV expired.
- Pi said that they had found further evidence which they considered highly relevant to the case – they shared an email with this service from the receiving scheme (Royal London) to their adviser. In the screen shot of the email provided, it shows Royal London's case history of the transfer and that they chased the DB administrator on 23 May 2022. Royal London's notes of that telephone call state: *'called the scheme and spoke to (person X) who confirmed all the forms have been received and there is a letter being drafted to send to us but he couldn't tell me what was in it at this moment – said I would call next week by which time we would have had the letter'*. There is then a further entry dated 6 June 2022 that states: *'spoke to (person Y) at the scheme – was waiting for conf of advice form off IFA but he located it – with admin team now for processing'*.
- Pi provided copies of the two recorded calls that Royal London had held with the DB administrator on 23 May 2022 and 6 June 2022.
- Pi went on to say that on 8 June 2022, the DB administrator contradicted their earlier communication to Royal London (on 6 June 2022), when they issued a letter to say the S48 hadn't been received and the CETV would need to be recalculated.

## 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've looked very closely at all of the information that Pi has submitted in support of their claim that they shouldn't be held accountable for the decrease in Ms J's CETV. However, having carefully considered their submissions, I have reached the same conclusion as my provisional decision, and I'll explain why below.

Pi says that a copy of the S48 letter was posted from their head office to the adviser's office on 16 May 2022, and they have shared an extract of their postal log as evidence that they had sent it to him on that date. They have also said that would then have given the adviser adequate time for that original letter to then be posted to the DB administrator before the CETV expired. However, whilst I've no reason to doubt Pi sent a copy of the S48 letter to their adviser on 16 May 2022, I'm not persuaded that he then forwarded a copy of that letter to the DB administrator. I say that because on 16 May 2022, Pi emailed the transfer request and discharge forms, a copy of Ms J's photo ID and a letter of authority to the DB administrator. In the same email, Pi explained that the S48 letter would follow shortly.

So, that meant if Pi posted a copy of the S48 letter to their adviser on 16 May 2022, it couldn't have been enclosed in the paperwork that was then sent to the DB administrator on the afternoon of 16 May 2022 (sent by Special Delivery at 14:54) meaning that he would've had to have sent that letter under separate cover at a later date. And, I've not been provided with any evidence (such as Royal Mail track and trace or emails) that demonstrate Pi's adviser subsequently shared the S48 with the DB administrator prior to the CETV expiring. In any event, had the adviser received the S48 letter from Pi in the post, the earliest he would have received it would have been Tuesday 17 May 2022, meaning he only had a few working days left that week to get it to the DB administrator ahead of the CETV expiring at the end of the week. So, had he posted it, I think it's more likely than not that he would've done so using Royal Mail's tracking service to guarantee the DB administrator would receive it before the deadline.

Pi have explained that having obtained copies of the recorded calls between Royal London, who are the receiving scheme for Ms J's DB transfer, and the DB administrator, it throws new light on the chain of the events, specifically when the DB administrator informed Ms J and Royal London of the missing S48 letter. I've listened to both the call recordings that Pi have submitted to this service which, they say, proves the scheme administrator gave out conflicting information. I've transcribed the relevant section of the first call of 23 May 2022:

Royal London: *"We sent all the forms through on 17<sup>th</sup> by Special Delivery, I just wanted to confirm you've got everything you need and we're just waiting for you to do your disinvesting and all that."*

DB administrator: *"I see we're currently drafting up a letter there, as it is currently being drafted up, I don't see what they're sending out but the administration team will issue that out soon just confirming whether we've got everything or if we need anything else there but it does look like we've received the forms that you sent it's just us processing them just now."*

Royal London: *"Shall I move it on for a couple of weeks for an update?"*

DB administrator: *"I'd say we'd be sending that out this week, the draft has just gone up for that so the administration team should be amending that soon and getting that sent out and*

*that will confirm whether we have everything we need or if we need anything else. It's just got a marker saying we're sending something out in response."*

Despite what Pi says, I don't believe that the DB administrator did say that they had everything that they needed for the transfer on 23 May 2022 call. The DB administrator said that the administration team would issue their letter, confirming whether they had everything or if anything else was required after they'd had the opportunity to review the file. The operator on that day only confirmed that they'd received Pi's paperwork and they didn't confirm that paperwork was complete or met their standard necessary to enable the CETV to be released.

In the call of 6 June 2022, after asking for an update on the progress of the transfer, the scheme administrator stated:

DB administrator: *"We sent out a letter to you guys on 20 May, saying there was some outstanding information we required a copy of written confirmation provided to the member that confirms advice had been provided on headed paper and signed by the adviser and this must be received within three months of the date it was issued that the transfer value statement, written confirmation from a senior manager employed at the firm confirming that the financial adviser who provided the advice works for them and if the adviser is an appointed representative."*

Royal London: *"Who's all this gone to sorry?"*

DB administrator: *"You guys, Royal London."*

Royal London: *"When as it sent?"*

DB administrator: *"20<sup>th</sup> May."*

Royal London: *"Is this the mysterious letter that (person x) said was being drafted to me on the 23<sup>rd</sup> but he couldn't tell me what was in it? He said a letter was being drafted but he couldn't tell me what was in it, and I've had no letter. I'm slightly disturbed because it's now 6<sup>th</sup> June and I've had nothing."*

DB administrator: *"There doesn't seem to be anything for the 23<sup>rd</sup>, the most recent event is the 28<sup>th</sup>. We've got an email here from the financial adviser, I'm just checking if that is the document that was requested and if it is, then it should be okay. ... Yeh, it looks like we got the IFA advice letter and that was sent from them three days ago. There's another email here, I'm just trying to have a little look through. So, it looks like we have everything that we need, that was the only document that was outstanding and they look like they're on the file now. My assumption is the administration team once they've had a little read through this they'll be in contact just to let you guys know when the payment will be made."*

Royal London: *"So I haven't had a letter sent to me?"*

DB administrator: *"There was one sent to you, you may not have received it just yet, we have an email from the financial adviser with a photo of the letter that we sent out to you guys, so it may have just been forwarded on to them because it technically does concern them more than it does you. Obviously, stuff that we require from them, they look like they've then re-sent the information that we require which is the IFA advice letter and confirmation of this from a senior at the firm just confirming that the adviser works for them. It looks like we have the documents here back from the financial adviser. I would assume it's just a waiting game now for the administration team to get in contact with you, to let you know when the payment will be made."*



I think the first thing to say about both calls (on 23 May 2022 and 6 June 2022) are that they were undertaken after the CETV had already expired on 22 May 2022. So, arguably, it didn't really matter what the scheme administrator said on 23 May 2022, because at that point, it was too late for either the consumer, the IFA or the receiving scheme to do anything about the CETV expiring. Pi have explained that on 6 June 2022, the scheme administrator stated: *"They look like they've re-sent the information that we require"*. This comment, they say, suggests that they'd already had a copy of the S48 letter – however, I'm not persuaded it does. I think the term 're-sent' is, more likely than not, a figure of speech because had the scheme administrator already had the S48 letter and for example were unable to read the letter, or if there was an issue with it, they would've set out what the problem was with it. Rather, in this instance, Royal London were speaking to an operator who, in the brief space of only five to eight minutes, was quickly glancing through a file and wouldn't have had a full set of facts before him, so I don't think Pi can place any weight on that one word when considering the wider facts and circumstances of the case.

I do accept there does appear to be some inconsistency between the two calls around when the DB administrator's letter (dated 20 May 2022) highlighting the missing S48 was sent to Ms J. It seems to me from the call on 23 May 2022, that it hadn't been sent to Ms J at that point as it was still sat with the scheme's administration team waiting for editing. When Royal London called back on 6 June 2022, I think it's more likely than not that the call handler concluded the letter had been sent to Ms J on 20 May 2022, as that's when the letter is dated. It's clear that it had been sent at that point (6 June 2022), because the DB administrator then explained to Royal London that the S48 letter had been submitted to them on 28 May 2022 (which is the same day that Ms J says she received the scheme administrator's letter).

### Summary

I've thought carefully about what Pi have said about the provisional decision, but I'm not persuaded that fault for Ms J missing the CETV deadline lies elsewhere. As I've already explained, my decision is about the actions of Pi rather than any other third parties – I don't think Pi managed the customer advice journey particularly well, from the point Ms J contacted Pi for help with her retirement planning needs, they took 22 days to meet with her on 8 April 2022. It then took 11 days for the first draft suitability report to be crafted and then it took their internal compliance team 27 days to sign the suitability report off.

From when the transfer paperwork was submitted, it only gave the DB administrator four working days to spot any problems. And, whilst it seems that the DB administrator's letter highlighting the missing S48 was only issued after the CETV had expired, given that Pi was already of the view that the customer service levels provided by that specific DB administrator was lacking, they then failed to follow-up with the scheme administrator after submitting the paperwork to satisfy themselves that they were in receipt of all of the necessary paperwork. I think it's more likely than not that, had they submitted the transfer paperwork earlier and followed up with the scheme administrator whether all of the mandatory paperwork had been received, the error would most likely have come to light. As an authorised pension transfer specialist, Pi knew what was required of them and understood the CETV couldn't be processed without the S48. So, by leaving the application to the final days of the CETV expiration deadline, I don't think that Pi acted with the due care, skill and diligence which the regulator expects and as such, I'm upholding Ms J's complaint and require Pi to put things right for her in the manner that I've set out below.

## **Putting things right**

My decision is that Pi should put Ms J back into the position that she would have been in had it not been for their mistake. That means they must undertake a loss calculation to determine the impact that the reduced CETV has had on her Royal London pension, along with any investment growth that she would have benefited from.

Pi needs to compare the original CETV that offered a transfer amount of £543,895 (that was guaranteed until 22 May 2022) plus the investment returns that Ms J would have made, had the monies been invested when they should have been (using Royal London's GPS5 fund as the benchmark), with the position that Ms J actually found herself in, and then they should pay the difference as compensation.

But, Ms J has told us that she planned to take £76,000 of that fund in tax-free cash and use those monies to repay her outstanding mortgage debt. So, Pi needs to also take account of the additional mortgage interest that Ms J paid because she was unable to repay her borrowing when she intended to do so.

Given the complexity of the case, I acknowledge that what I've set out below wouldn't fully replicate what would have happened had the mistake not occurred, but I'm satisfied it will do so as near as is reasonably possible without making the process too onerous. Given we're a quick and informal dispute resolution service, I think what I've set out is the fairest and simplest approach to drawing a line under the complaint.

## **Fair compensation**

In assessing what would be fair compensation, my aim is to put Ms J as close as is possible to the position that she would probably now be in, had the transfer been undertaken when it should have. It is not possible to say precisely what date the transfer would have taken place had it not been for Pi's mistake, but I'm satisfied that what I have set out below is most likely, and therefore is fair and reasonable given Ms J's circumstances and objectives when she invested.

Pi should compare the difference between the CETV that Ms J was originally offered (with the expiry date of 22 May 2022), to what was eventually transferred.

I've looked closely at the DB administrator's transfer guidance – it states that they ordinarily take two weeks to undertake their administration process and then 80% of transfers are completed three weeks after that, and a further week is added for the payment to be undertaken. So, had Pi submitted all of the required documentation when they should have, it's reasonable to conclude that, based on the DB administrator's guidance, the funds would have been transferred on 1 July 2022 at the latest, and that it would have been the original CETV that got transferred. Therefore, Pi needs to:

- Compare the performance of Ms J's Royal London pension with the notional value if those monies had transferred when they should have. If the actual value is greater than the notional value, no compensation is payable. If the notional value is greater than the actual value, there is a loss and compensation is payable.
- Pi should also add any interest set out below to the compensation payable.
- If there is a loss, Pi should pay into Ms J's pension plan to increase its value by the amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

- If Pi is unable to pay the compensation into Ms J's pension plan, it should pay that amount directly to her. But, had it been possible to pay into the plan, 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 that the compensation is a fair amount – it isn't a payment of tax to HMRC, so Ms J won't be able to reclaim any of the reduction after compensation is paid.
- The *notional* allowance should be calculated using Ms J's actual or expected marginal rate of tax at her selected retirement age. It's reasonable to assume that Ms J is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Ms J would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.
- Income tax may be payable on any interest paid. If Pi deducts income tax from the interest, it should tell Ms J how much has been taken off. Pi should give Ms J a tax deduction certificate in respect of interest if she asks for one, so she can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Royal London Pension Portfolio Plan	Open and liquid	Governed Portfolio 5	1 July 2022	Date of my final decision	8% simple per year if Pi have not paid any redress due within 30 days of the consumer accepting the final decision

### **Actual value**

This means the actual amount payable from the investment at the end date.

### **Notional value**

This is the value of Ms J's investment had it been invested at the correct time until the end date. Pi should calculate this value.

Any withdrawal, income or other distributions paid out of the investment should be deducted from the notional value calculation at the point that it was actually paid, so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if Pi totals all of those payments and deducts that figure at the end.

This includes taking account of the tax-free cash withdrawal that Ms J made to repay her mortgage:

### Mortgage interest

In undertaking their loss calculation, Pi should assume that Ms J would have taken the £76,000 tax-free cash to repay her mortgage. Pi should establish the amount of mortgage interest Ms J paid for the period from 5 July 2022\* to 2 February 2023\*\* and refund those monies to her. To do so, they should use the following calculation:

$$a. \quad £76,000 \text{ tax free cash} \times (\text{mortgage interest rate}) / 365 \times (\text{days in the month})$$

\* 5 July 2022 is the date that I think is most likely Ms J would have received the original tax-free cash from her Royal London pension (based on the fact that when she later transferred her DB scheme, it only took two days for those monies to be released to her). This is the assumed date at which she would have then passed those monies to her mortgage lender to repay the borrowing.

\*\* 2 February 2023 is the date that Ms J actually received the tax-free cash (from the second CETV), allowing her to repay her mortgage.

As I've already explained, as we're working to a different timeline now, I recognise that the above approach wouldn't fully replicate what would've happened had the mistake not occurred, but I'm broadly satisfied it closely matches as far as is reasonably possible, what's most likely to have happened. Therefore, Pi should calculate what interest Ms J unnecessarily paid on her mortgage during that period because she was unable to access her tax-free cash when she wished to do so.

Ms J should promptly provide a mortgage statement to Pi covering the period set out above, to allow them to undertake the calculation.

### Refund of any additional charges

In upholding Ms J's complaint, I also need to take account of any additional costs that she incurred as a consequence of Pi's actions. Therefore, if the DB administrator charged Ms J for the new CETV that they issued in August 2022, Pi should also refund that charge to her. Pi should also add 8% simple interest per annum from the point that she paid any charge to the date of settlement.

### Trouble and upset

Ms J has told this service that she's found the whole transfer process incredibly stressful, placing a drain on her household finances. She went on to explain that she was planning to use the saving from her monthly mortgage payment to improve her home energy efficiency. As we're an evidence-based service, I can't make an award for that, as I would be unable to determine how much Ms J could have reduced her energy bills by – I can, however, make an award for the trouble that Pi have caused. Therefore, Pi should also pay Ms J £300 for the distress and inconvenience that they've caused by not submitting her transfer application in a timely manner.

### **Why is this remedy suitable?**

I've chosen this method of compensation because, had Pi submitted the advice confirmation letter when they should have, Ms J would have benefited from the higher transfer amount and allowed her to promptly repay her mortgage, therefore, this will place her as closely back into the same position that she would've been in, had it not been for Pi's delays.

**My final decision**

I am upholding Ms J's complaint and as such, I require Pi Financial Ltd to put things right for her in the manner that I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms J to accept or reject my decision before 24 January 2024.

Simon Fox  
**Ombudsman**