

## **The complaint**

Mrs T has complained about advice she received from Haven Protect Limited in respect of two defined benefit pension schemes (which I'll refer to as "Pension A" and "Pension B").

## **What happened**

Mrs T was referred to Haven by her financial advisor as she was seeking advice on transferring both pensions. She had retired and because of past health issues and an age gap between her and Mr T she wanted to make the most of the next ten years eg travel and leisure pursuits. She said the health issues in particular highlighted limitations in the death benefits provided by the pensions.

Mr and Mrs T's income needs were being met by rental property income and Mr T's pensions, and they had around £350,000 in the bank. So given the two transfer values (around £750,000 each) Mrs T felt it was a good opportunity to look into the flexibility offered by a self-invested personal pension ("SIPP") to meet her retirement objectives.

Initial discussions about Mrs T's financial situation and retirement objectives took place at the end of November 2021. Mrs T said she:

- was looking to fully retire within two years (before the normal retirement age of either pension) and wanted to access benefits from this point
- wanted flexibility over her income to allow more travel and leisure pursuits in the early phase of retirement (while health permitted)
- wanted to protect death benefits at the levels as defined in the transfer values in order to support Mr T and protect the values that had built up
- wanted to maximise the tax-free cash available in order to buy a holiday home.

On 24 January 2022 Haven gave Mrs T abridged advice. It recommended that she not transfer Pension A and review the matter again in five years. For Pension B it said it needed to carry out further in-depth analysis to establish whether she should transfer it.

On 25 January Mrs T authorised Haven to proceed to the full advice stage for Pension B. Haven set out its full advice in respect of Pension B in a report dated 26 January. It advised Mrs T to transfer Pension B to a SIPP that would facilitate flexi access drawdown. No recommendation or further comment was made in respect of the suitability of transferring Pension A.

In an email to Mrs T's financial advisor dated 31 January 2022 Haven said it chose Pension A as the one to not transfer because of its more favourable early retirement terms – the lower retirement age without penalty gave Mrs T flexibility in deciding whether to transfer it depending on the investment performance in the next five years. It confirmed that its full advice was only in respect of Pension B.

Mrs T complained to Haven in March 2023. In summary, she said she made it clear to Haven that her intention was to transfer both pensions but it only gave her full advice on Pension B. She also said the advice was received shortly before Pension B's transfer value

expired (leaving her with little time to make an informed decision) and that the downside of leaving Pension A where it was (eg the transfer value reducing) wasn't made clear to her.

Haven didn't uphold Mrs T's complaint. It felt its advice was suitable and that Mrs T had sufficient time throughout the process to fully consider the benefits and drawbacks of transferring the pensions.

### **What I provisionally decided – and why**

I issued a provisional decision which set out why I felt the complaint should be upheld in part. The relevant parts of my provisional decision are outlined below and form part of my final decision.

The advice process consisted of three steps:

1. a triage (fact find) discussion
2. followed by abridged advice
3. followed by full advice (if it was needed).

### ***What was agreed***

- Mrs T said she agreed a service with Haven that it would fully review and advise on both pensions. It was clear that Mrs T sought advice on both pensions – as she was interested in transferring both. However, I wasn't persuaded there was any agreement in place that required Haven to provide *full* advice on both pensions – in my view the agreement was simply for Haven to provide advice.
- Mrs T referred to emails between Haven and her financial advisor about the advisor's fee being capped at £15,000. But these emails only referred to Haven advising on both pensions – there was no reference to Haven giving full advice on either or both of them. The financial advisor's introductory email to Haven on 24 November 2021 also simply said that Mrs T was "*seeking advice on two deferred defined benefit pensions*".
- Accordingly, I concluded that the agreement Haven entered into was simply to advise Mrs T on both pensions and to charge her no more than £15,000 for doing so. There was no agreement that it would provide full advice on either or both pensions.

### ***Abridged advice***

- Abridged advice is short form defined benefit pension transfer advice (usually at a much lower cost than full advice). It consists of the initial stages of a full advice process ie fact finding, determining the consumer's attitude to risk and getting confirmation of the benefits provided by the existing pension(s). But there are limitations.
- First, abridged advice can only result in two outcomes – advice to not transfer the pension; or telling the consumer it's unclear whether or not they would benefit from a transfer based on the information collected during the abridged advice process.
- Second, advisors can only gather limited information and conduct limited analysis. They should consider the risks of the consumer staying in the existing scheme compared to the risks of transferring and giving up the guaranteed benefits; and they can model the benefits from the consumer's existing defined benefit pension against their estimated expenditure needs in retirement. However, they're prohibited from:

- considering a proposed receiving scheme or investments
  - carrying out appropriate pension transfer analysis (including obtaining projections and cashflow modelling based on the transfer value, obtaining annuity illustrations and conducting comparisons based on a proposed receiving scheme) or prepare a transfer value comparator
  - assessing how well an alternative arrangement would meet the consumer's objectives if a transfer went ahead.
- Advisors are also prohibited from arranging a transfer where the consumer has only received abridged advice. If abridged advice results in a conclusion to not transfer, a suitability report should be issued to the consumer.
- So it wasn't possible at the abridged advice stage of the process for Haven to recommend that Mrs T transfer Pension A – the only options it had were to recommend that she not transfer or to tell her that it was unclear whether transferring was beneficial.
- I therefore thought the issue for me to determine was whether Haven's recommendation to not transfer Pension A was suitable.

*Was the advice Mrs T received suitable?*

- The nub of Mrs T's complaint was that Haven concluded she shouldn't transfer Pension A without giving any appropriate reasoning given her circumstances and preferences.
- The regulator has determined that when giving defined benefit pension transfer advice the advisor should have started by assuming that transferring won't be suitable. And they should only consider transferring to be suitable if it could be clearly demonstrated that transferring was in Mrs T's best interests. This 'presumption of unsuitability' applied to both the abridged and the full advice.
- Mrs T was opposed to the idea of taking the pension benefits from Pension A in its current form and Haven's advice to not transfer Pension A was in opposition to her wishes. But Haven's role wasn't to simply make a recommendation that aligned with Mrs T's objectives/wishes and/or allowed her to do what she wanted. It was to provide her with suitable advice that was in her best interests (which may, of course, not align with what she wanted to do).
- Haven felt what was in Mrs T's best interests was a "half and half" option ie leave one defined benefit pension where it was and transfer the other one. Having reached that general conclusion, I thought the reasoning behind why Haven felt Mrs T should leave Pension A where it was and transfer Pension B (because the early retirement benefits on Pension A are more beneficial) was reasonable.
- Mrs T referred to Haven not including Pension A in the full advice analysis, process, report etc. But having given the abridged advice it did – ie don't transfer Pension A – it didn't need to conduct a full analysis into whether transferring Pension A was suitable. For similar reasons, and because Mrs T only authorised it to proceed with the further analysis for Pension B, Haven didn't need to comment on Pension A in its full report.
- Mrs T also referred to Haven not pointing out the risks of the transfer value reducing if she left Pension A where it was. As part of the abridged advice process Haven should have considered the risks of Mrs T staying in Pension A compared to the risks of transferring it. But those risks were generally concerned with the guaranteed income

from a defined benefit pension versus the potential income from a defined contribution pension (which wasn't guaranteed because it was dependent on investment performance), and whether Mrs T had the necessary capacity to absorb any loss of her pension income. The risk of the transfer value falling didn't form part of the overall consideration. I thought pointing this out could have been construed as steering a consumer towards transferring which might not be in their best interests.

- The main issue though was whether the “half and half” option rather than a “transfer both” option was suitable.
- Haven hadn't given any specific reasons for concluding that Mrs T should leave Pension A where it was. I'd asked, but it replied saying it was made clear in discussions it held with Mrs T that only Pension B was being transferred. Whether this was discussed or not, there was still no reasoning as to why Haven chose the “half and half” option over the “transfer both” option.
- Nevertheless, having considered Mrs T's circumstances I wasn't persuaded that the “half and half” advice was unsuitable. This was because Mrs T's prime objective was to be able to maintain current income levels and have extra funds available to enjoy and make the most of the next ten years. In my opinion, the existing savings and being able to access the funds from Pension B enabled her to meet this objective. It also enabled her to partially meet the objective of protecting the death benefits that could be passed on to Mr T or other beneficiaries.
- I appreciated that Mrs T might have wanted more funds available (from both pensions). But there was nothing to suggest that she needed all the extra funds to enjoy the next ten years. I wasn't persuaded that the ‘want’, with the income versus expenditure levels, was sufficient for Haven to overcome the presumption of unsuitability. Retaining Pension A meant that Mrs T still had a secured retirement income if her other income streams reduced or ran out (which is what the presumption of unsuitability is designed to protect against).
- Haven failed to provide Mrs T with a suitability report outlining why transferring Pension A was unsuitable – as it was required to do. In my view, the initial email saying *“my recommendation is to leave [Pension A] where it is for now...”* and the further explanatory email after the suitability report on Pension B was issued didn't satisfactorily meet this requirement. The report and reasoning didn't need to be detailed – it was only abridged advice after all – but some detail was needed explaining why transferring Pension A wasn't in Mrs T's best interests. However, I wasn't persuaded this failure had any effect on the overall situation because even if Haven had given Mrs T a fuller abridged advice report the advice for Pension A would still most likely have been to not transfer.

#### *Delay in the advice*

- Mrs T confirmed to me that Pension B was transferred as she wished and although her decision to transfer was rushed she would have made the same decision even if she'd been given more time to consider things and weigh up the options. So apart from the stress of having to make a decision quickly I didn't think any delay in the advice being given materially disadvantaged Mrs T in respect of Pension B. Accordingly, I thought the issue here concerned any delay in Haven providing Mrs T with advice in respect of Pension A.

- There wasn't a set time in which Haven had to provide the advice. But defined benefit pension transfer advice is often time critical because most transfer values are only guaranteed for three months. And an "abridged advice then full advice" process will take longer than a "just full advice" process because there are two stages rather than one. As the professional party in the transaction Haven should have been aware of the time pressure.
- The transfer value was provided by Pension A on 26 October 2021 and was guaranteed until 25 January 2022. Mrs T was introduced to Haven on 24 November, so a month had passed already. The triage discussions took place at the end of November 2021. The next meaningful contact was on 24 January 2022 when Haven gave Mrs T the abridged advice. The advice report for Pension B was dated 26 January 2022, although Mrs T never received it until 28 January 2022.
- Mrs T wasn't under any obligation to transfer either pension so I didn't think it was strictly true to say that she was left with no time to challenge, discuss and/or explore the advice. She could have done so – although I appreciated the position she was in with the expiry dates of the transfer values and therefore feeling as though a rushed decision needed to be made.
- It did nevertheless take Haven eight weeks to provide the abridged advice. I wasn't therefore persuaded that it treated Mrs T fairly given the time pressure in these transactions. I wasn't aware of the full chronology of events – although Haven had pointed to the transfer values not being received until early and mid-January. It was clear though that the abridged advice was given the day before the expiry date of Pension A's transfer value. And there were two things that stuck out to me.
- First, Haven told Mrs T on 27 January 2022 that it had a recent rush of cases where deadlines were approaching and it was dealing with them in order so that no-one missed the deadline. So it looks like Haven might not have had sufficient resource in place to handle the work it had taken on in a reasonable timeframe.
- Second, and more importantly in my opinion, the full advice report was dated the day after Mrs T authorised Haven to proceed with the further analysis for Pension B. Given this short timeframe, it seemed very likely to me that Haven already had all the information it needed in order to provide full advice on Pension B. It therefore seemed most likely to me that Haven spent time during the abridged advice process gathering and considering information it needed in respect of the full advice on Pension B. This was important because at the abridged advice stage Haven was prohibited from considering the proposed receiving scheme and investments, doing a pension transfer analysis and transfer value comparator and assessing how well an alternative arrangement would meet Mrs T's objectives if a transfer went ahead. Yet as it was able to prepare the advice report so soon after Mrs T authorised it to proceed with Pension B it seemed Haven had spent time during the abridged advice process doing precisely that – thereby delaying the abridged advice.
- Accordingly, I concluded that Haven unnecessarily delayed providing the abridged advice.
- The issue then turned to whether this delay disadvantaged Mrs T. Similar to Pension B, Mrs T was left with little time to stand back and fully reflect on the advice she'd received on Pension A. But I wasn't persuaded that the overall outcome would have been different because even without the delay it was most likely the guaranteed transfer value on Pension A would have expired before Mrs T could arrange a transfer.

- This was because if the abridged advice been given, say, a month earlier than it was it was most likely that the advice would still have been to not transfer. That wouldn't have precluded Mrs T from transferring Pension A if she still wished. But because Haven doesn't assist consumers or carry out transfers if it recommends staying in the original pension Mrs T would have had to find a different advisor to arrange the transfer. The new advisor would then have needed to give Mrs T full advice on the suitability of the transfer, which would have required them to carry out a full review of her financial position, objectives etc and to gather the relevant information. In my opinion, that would have taken longer than the four weeks or so before the transfer value expired – particularly given the Christmas and New Year period.

### *Compensation*

- There were delays in Haven providing the abridged advice and the full advice on Pension B such that the advice was given days before the guaranteed transfer values expired. I didn't think the delay led to Mrs T being in a different position in respect of either pension. But I thought the lateness of the advice caused her unnecessary distress in having to make an irreversible decision without a lot of time to fully consider things. I also thought the lack of clarity on the Pension A advice led to Mrs T suffering a loss of expectation in being able to transfer this pension.
- I concluded that Haven should pay Mrs T £300 for the distress caused and the loss of expectation.

### *Summary*

- For the reasons outlined above, I concluded that Haven:
  - gave Mrs T suitable abridged advice
  - failed to provide Mrs T with a sufficiently detailed abridged advice report – although this didn't adversely affect Mrs T's position
  - unnecessarily delayed the abridged advice – although this didn't adversely affect Mrs T's position
  - should pay Mrs T £300 compensation for the distress and loss of expectation caused by the delay.

### **Responses to my provisional decision**

Haven was disappointed with my proposed outcome but it accepted it. Mrs T disagreed with my provisional decision. She made various comments which I've addressed below.

### **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.

Mrs T felt that I'd given Haven a 'free pass' given that I'd identified issues with the advice process. I understand Mrs T's feelings; however, we're not the regulator and I don't have the power to make a financial award simply because Haven got something wrong or treated Mrs T unfairly. I can only make Haven pay compensation or take some other action if the wrongdoing disadvantaged Mrs T.

### *What was agreed*

In my provisional decision I explained why I disagreed with Mrs T's view that the service agreed with Haven and that she paid for was that it would *fully* review and advise on both pensions. My conclusion in this respect remains the same – for the same reasons.

Mrs T has provided us with an email from the advisor dated 26 January 2022 sent following a conversation the previous day where she said she still wanted to transfer Pension A. The email said *"I should think, there will be some allowance for it, even if not totally without charge (as your circumstances will have changed so there will need to be another fact find, and the analysis of the scheme will have changed due to the new CETV statement)"*. I don't think this changes the nature of the service that was agreed. It's still clear, in my opinion, that the agreement was for Haven to simply to advise Mrs T on both pensions and to charge her no more than £15,000 for doing so. This is what it did.

It was Mrs T's financial advisor who negotiated the fee agreement with Haven so Mrs T might (and I make no judgement here as it's not what I'm considering) have grounds for a complaint against her financial advisor if she feels it negotiated the wrong deal.

*Was the advice Mrs T received suitable?*

In a nutshell, I concluded that Haven:

- deciding that Mrs T should leave one pension where it was and transfer the other one (the "half and half" option) was reasonable; and that its reason for deciding that Pension A should be the one to not transfer was also reasonable
- didn't therefore need to carry out a full analysis into whether transferring Pension A was suitable and didn't need to comment on Pension A in its full report; and the risk of Pension A's transfer value reducing didn't need to form any part of Haven's abridged advice consideration
- didn't provide Mrs T with a suitability report outlining why transferring Pension A was unsuitable, but this didn't have any effect on the overall situation.

I said the "half and half" option combined with the existing savings enabled Mrs T to meet her prime objective of being able to maintain current income levels and having extra funds available to enjoy and make the most of the next ten years. I also said it enabled her to partially meet the objective of protecting the death benefits that could be passed on. Mrs T questioned why a partial solution was okay. She accepted that the primary purpose of a pension is to provide an income in retirement, but said as she already had sufficient income from other means the advisor should have considered other issues eg the main reason for wanting to transfer both pensions was because she didn't need the income from either of them.

I understand the point Mrs T makes – essentially it's her money and she should be able to do what she wants with it. But, as I said in my provisional decision, the advisor wasn't there to simply give Mrs T advice that enabled her to do what she wanted – he had to give advice based on what he thought was in her best interests. So he had to look at the overall picture.

It's true that Mrs T already had access to a significant amount of savings and that she would have had a further £1.5million (approx) to draw on if she'd transferred both pensions. I appreciate that's a large amount of money to spend in retirement. But those funds might dwindle during retirement (which might of course last far longer than 10 years) eg because of a large unexpected expense such as a major house repair or medical treatment, because investments fail or because Mrs T spends more over time than she anticipated when she asked for the advice. These are things the advisor needed to consider.

Retaining Pension A meant Mrs T was able to achieve her primary objective and have a secured retirement income if her other income streams reduced or ran out. It also meant her other objective was met (albeit by not as she'd wanted) because if she passes away Pension A will pay a spouses pension and the funds in Pension B once transferred can be passed on.

Mrs T felt my conclusion that Haven not providing her with a detailed abridged advice report was incorrect. She said it was possible to transfer Pension A following full advice and she was denied this opportunity. She also said that as Haven didn't provide her with full advice on both pensions she will now have to pay for full advice on Pension A if she wants to transfer it.

I don't think Haven failing to provide a detailed abridged advice report denied Mrs T the opportunity of getting full advice and, therefore, being in a position to transfer Pension A. This is because after receiving the brief abridged advice she could have asked Haven to give her full advice on Pension A and Pension B. But even if this had happened, I think it's likely that she'd have been in the same position with the transfer value expiring and with potentially having to pay another advisor (if she could find one) to arrange the transfer.

Mrs T commented on Haven telling me that transferring Pension B only was made clear in discussions it had with her – she said this wasn't discussed and it didn't come to light until the abridged advice report. She felt this dishonesty in what Haven was saying had been brushed over. What I said was in respect of Haven's reasons for choosing the 'half and half' option over the 'transfer both' option. Ultimately, in deciding this specific point, I didn't think it mattered whether the two options had been discussed previously or not because either way it remained that Haven gave no reasons for choosing the "half and half" option.

#### *Delay in the advice*

In response to my provisional decision Mrs T referred to my concluding comment about what would most likely have happened if the abridged advice been given a month earlier. She said that although Haven wouldn't have assisted her with the transfer she could have potentially transferred the pension to a 'direct to consumer' SIPP provider if Haven had confirmed it had given her full advice.

I concluded – and it remains my opinion – that Haven ought to have been aware of the time pressure associated with this type of advice and that it unnecessarily delayed providing Mrs T with the abridged advice. But that wasn't enough in itself for me to uphold Mrs T's complaint. As I've said above, I needed to also consider whether this disadvantaged her.

The comments Mrs T refers to explained why I didn't think – and still don't think – she was disadvantaged by the delay in Haven giving her the abridged advice. This is because it was more likely than not that even if Mrs T had received the abridged advice earlier she wouldn't have been able to arrange the transfer of Pension A (even to a 'direct to consumer' SIPP) before the transfer value expired because she would have needed to get full advice on Pension A first. So, in effect, the position she found herself in with transferring Pension A wasn't materially different to the position she would have been in without the delay in the abridged advice.

I don't therefore agree with Mrs T's comments. It wasn't possible for her to transfer Pension A unless she'd received full advice (from Haven or elsewhere). And Haven couldn't have confirmed that it had given her full advice in respect of Pension A because it hadn't done so.

#### *Compensation*



In my provisional decision I explained that the lateness in Haven providing the abridged advice and the full advice on Pension B and the lack of clarity on the Pension A advice led to Mrs T suffering unnecessary distress and a loss of expectation in being able to transfer Pension A. I concluded that Haven should pay Mrs T £300 for this.

I recognise this doesn't match what Mrs T might have to pay for further advice on Pension A. But this compensation isn't designed to compensate her for that. My conclusion in this respect therefore remains the same – for the same reasons.

### *Summary*

I reconsidered this complaint in light of Mrs T's further comments but I'm not persuaded to change the conclusions I reached in my provisional decision. So for the reasons outlined above, I conclude that Haven:

- gave Mrs T suitable abridged advice
- failed to provide Mrs T with a sufficiently detailed abridged advice report – although this didn't adversely affect Mrs T's position
- unnecessarily delayed the abridged advice – although this didn't adversely affect Mrs T's position
- should pay Mrs T £300 compensation for the distress and loss of expectation caused by the delay.

### **My final decision**

I uphold this complaint in part. I require Haven Protect Limited to pay Mrs T £300 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 12 June 2024.

Paul Daniel  
**Ombudsman**