

The complaint

Mr M complains about the poor service he received from WPS ADVISORY Ltd when he was trying to transfer his defined benefit occupational pension scheme (OPS) to a personal pension arrangement. Mr M considers that WPS ADVISORY Ltd caused delays to the transfer and he suffered a loss because a new CETV (Cash Equivalent Transfer Value) was required which was significantly lower.

What happened

One of our investigators considered Mr M's complaint. She sent her assessment of it to both parties in March 2023. The background and circumstances to the complaint and the reasons why she thought it should be upheld were set out in her assessment.

In summary, the investigator said that Mr M had requested a transfer value from his OPS in December 2021. Mr M received a letter from WPS ADVISORY Ltd (which I will refer to as WPS) on 14 December 2021 explaining that he could engage it to provide advice, paid for by the OPS' Trustees, about a transfer from the scheme.

Mr M contacted WPS and a call to discuss a potential transfer was arranged for 21 February 2022. The call was subsequently changed to 22 February 2022. Following the call WPS carried out a Pension Transfer Analysis which recorded the Cash Equivalent Transfer Value (CETV) as £382,603. This CETV was guaranteed until 24 March 2022. WPS had another call with Mr M to discuss the transfer on 3 March 2022. The adviser said based on the information he had so far, he didn't think WPS could support a transfer recommendation. Mr M went on to explain the reasons why he thought a transfer was worthwhile however, ultimately, the adviser didn't change his mind. He said he would provide written confirmation of his advice.

Mr M wasn't happy with how the call had been handled, and he contacted WPS' Chief Operating Officer (COO). It was agreed that Mr M's transfer would be considered by a more senior adviser.

The new adviser e-mailed Mr M on 4 March 2022 to say she would review everything so far and, as the transfer value was only an estimate, would request a guaranteed quote. A call was arranged for 14 March 2022 as it was convenient for both parties. The adviser e-mailed Mr M the next day explaining she would need further information from him for her review.

On 1 April 2022 the adviser e-mailed Mr M to say she was happy to move forward. She said she was waiting for a recalculation of the CETV due to the current one expiring.

There was some further correspondence between Mr M and WPS during April about the pension that Mr M was planning on transferring to. Ultimately it was decided he wouldn't go ahead with a transfer to that provider due to additional charges that could be applied.

During this time, WPS' COO was also in contact with the OPS regarding the CETV and the requirement of an updated guaranteed value.

On 6 May 2022 Mr M's adviser sent him an e-mail explaining it was her last day working for WPS and she required additional information as soon as possible. The adviser didn't speak to Mr M before she left. And a new adviser contacted Mr M on 19 May 2022 confirming that he had taken over. He asked for the same information. The investigator said Mr M provided the information to the new adviser on 23 May 2022 (Mr M has subsequently said he had already provided this information).

Between early June and mid-July 2022 Mr M sent several follow up e-mails and made calls to WPS, as the updated CETV hadn't been provided to him. He was told it was being followed up and they hadn't received it yet.

Mr M subsequently found out, via a letter from the OPS, that the full fee for the CETV hadn't been paid by WPS and this was the reason for the delay. Unable to get a response from WPS, he paid the additional fee.

On 18 August 2022 a new guaranteed CETV of £261,316 was issued. It was guaranteed for three months. A new Pension Transfer Analysis report was carried out on 23 August 2022.

After this point, Mr M's case was sent for a third final check with WPS' CEO. Unhappy with the delays, Mr M decided to use a different advisory business to move ahead with the transfer. The investigator said her understanding was the new firm was engaged on 28 September 2022. And that the transfer went ahead with the transfer value paid to the personal pension provider on 14 November 2022.

Having considered all the evidence provided by both parties, our investigator recommended that the complaint should be upheld. She didn't think it would have been possible for the advice process to have been completed in time to meet the original guarantee date (24 March 2022). However she did think WPS caused delays obtaining an updated CETV.

The investigator said that pension transfer advice was a legal requirement for safeguarded benefits over £30,000. She said valuable guarantees were lost when transferring, so the Regulator's starting position was that a transfer was unlikely to be suitable or in the consumer's best interests.

The investigator said that when Mr M approached WPS he had already received a CETV, and so the clock had started ticking on that quotation. She acknowledged that there was a period after Mr M had contacted WPS when Mr M had had to wait for a telephone appointment. But she thought it was reasonable to expect a certain amount of time for a business to arrange appointments and carry out any initial work required. She said Mr M's first telephone appointment was on 22 February 2022 – so this only left around one month for the bulk of WPS' research, analysis and recommendation to be provided.

The investigator said although the original adviser seemed to have only considered the transfer in light of basic information available initially, she thought WPS would have needed the information it subsequently requested at some point. And that it was reasonable to some degree for further information to be required during the transfer advice process. She said even if a new adviser hadn't been required, she didn't think the advice process would have been completed by 24 March 2022.

However the investigator noted that WPS was aware that the OPS was changing its administration service provider. And that from 5pm on 5 May 2022 there would be limited access to members' pensions, until the change completed on 23 May 2022. The investigator said from what she had seen the first time that WPS contacted the OPS' administrators regarding an updated CETV was in an e-mail on 1 April 2022. WPS had requested a one-month extension on the guarantee period as it had agreed it could go ahead and process the

transfer, and reports could be issued the next week.

The OPS' administrators responded on 4 April 2022 saying they couldn't extend the guarantee period past 7 April 2022. And that they would need the transfer option and financial advice forms provided to secure the CETV of £382,603. They said remaining information could be provided as soon as possible after this.

WPS responded on the same day saying it was in the process of finishing the advice report and it wasn't able to get the forms to the administrators by then. It said it would need a re-calculation.

The investigator noted that WPS didn't contact the administrators again until 22 April 2022. It said it needed a new value and it agreed to pick up the cost. It subsequently didn't pay all of the fee which Mr M discovered in July 2022 after he contacted WPS several times for updates on the transfer. Mr M paid the outstanding amount (£25) as the new CETV couldn't be provided until the full fee had been paid.

The investigator also said she was unsure why WPS waited until 22 April 2022 to request the new CETV, when it knew it was needed on 4 April 2022 - when the administrators said the deadline couldn't be extended. And she said WPS had delayed matters by not paying the correct fee. The investigator said had WPS formally requested it on 4 April and paid the right fee, she thought the CETV could have been received within a couple of weeks - 18 April 2022 - before the change in administrators. She said this value would have been guaranteed for three months, so until around 18 July 2022.

The investigator said that from everything she'd seen, it appeared that WPS had everything it required to proceed by 23 May 2022. So, taking into account a further two weeks to allow for the advice to be finalised and the administration to be completed, she thought Mr M would have been in the position to apply for the transfer by 6 June 2022. Allowing time for the OPS' administrators to complete their side of the process and given the timescales of what happened when Mr M transferred through another firm, she thought it would have taken around three weeks for the transfer to be completed. The investigator therefore thought the transferred funds would have reached the new pension provider by 27 June 2022.

The investigator went on to consider whether WPS would have recommended the transfer given that WPS didn't complete its advice process. She said that after considering the correspondence sent by the second adviser to Mr M confirming she was comfortable to move forward with the transfer, and the content of the e-mails from WPS to the OPS' administrators saying it had agreed to process the transfer and arrange for the reports to be sent to their writing team and issued in the next week, it followed that the advice was going to be positive, and the transfer would have been arranged.

Taking all the above into account, the investigator thought that Mr M's complaint should be upheld. She thought that WPS would have recommended a transfer. And that the CETV would have been issued on 18 April 2022 and the transfer completed by 27 June 2022. The investigator went on to set out how she thought WPS should calculate and pay compensation to Mr M based on these dates.

Mr M didn't agree with all of the investigator's findings. He put forward some further points for consideration.

WPS didn't accept the investigator's findings. It asked for an ombudsman's decision. However it didn't provide any further evidence or arguments to consider.

What I've decided – and why

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

Having done so, I've come to the same conclusions as the investigator, and largely for the same reasons.

Like the investigator, I think WPS ought to have requested the new CETV on 4 April 2022 - when the administrators said the deadline couldn't be extended. In my opinion what the investigator assumed in terms of timeliness was reasonable from the point that WPS was alerted it wasn't possible to extend the date for the original CETV. I note Mr M has said he had already provided the information that WPS had requested on 19 May 2022. However even if the adviser had considered that information on 19 May 2022 there was a weekend before 23 May 2002. And the OPS's administrators were in the process of changing. It's not possible to know exactly what would have happened and when in looking back in hindsight, and these matters need to be considered in the light of what would have been considered reasonable at the time. I think it was reasonable to assume the CETV could have been received by 18 April 2022, and the transferred funds would have reached the new pension provider by 27 June 2022 given all the circumstances.

Mr M has said he thinks if WPS had carried out its advice process with due diligence and promptness he would have obtained the original transfer value.

As the investigator explained, the Regulator, the Financial Conduct Authority (FCA), requires that when firms recommend a transfer of safeguarded benefits to a retail client they should start by assuming that a transfer will not be suitable. It's clear that Mr M was very keen to transfer. But the firm's role wasn't merely to facilitate Mr M's wishes to transfer. It was obliged to give its own professional recommendation on the suitability or otherwise of a transfer – even if Mr M didn't agree with that recommendation.

The Regulator's Conduct of Business Sourcebook (COBS) sets out the rules that firms have to follow in order to ensure that, ultimately, they provide advice that is suitable for the client. They are extensive. And where firms fail to meet their obligations under those rules they can be liable for the losses that flow from that failure. Pension transfer cases can involve large sums of money and a firm's liability can be significant. So clearly firms will want to ensure they take all the steps necessary to ensure they provide suitable advice.

Mr M has referred to the second adviser having to request further information after the first adviser had already made a conclusion on his case. He said it was clear the first adviser didn't do a thorough enough job. As I've said above, the firm's starting point was that a transfer would not be suitable. On further investigation it appears the firm did think a transfer was likely going to be suitable. I understand Mr M's point that this might suggest that the first adviser didn't obtain sufficient information in the first place. However I'm not assessing the suitability of the transfer here. And that further investigation was always going to be necessary. It's not unusual that the position develops over time with further information and or discussions. What's material is that I don't think the first adviser's actions resulted in the original CETV being missed.

Mr M has questioned why WPS didn't send the documents that the OPS' administrators said it could send to it by 7 April 2022 (in an email sent on 4 April 2022) to secure the CETV. WPS may have been on the road to recommending a transfer but it wasn't at the end of its process. As I've said above, the position can change over time, and there are a number of compliance checks and balances built into the process before a firm provides its formal advice. It appears that the firm did require further information from Mr M prior to providing its

final advice. But the point is, as I say, this area of advice is highly regulated, and even where clients are very keen to transfer a firm has to satisfy itself it's met all the associated regulatory requirements expected of it. In my view the firm wasn't obliged to provide those forms to the OPS at that point given it hadn't completed all its own processes.

Mr M has queried why the second adviser referred to the transfer value as only an estimate and asked what happened to the CETV requested by WPS on 25 February 2022. It appears that the adviser wasn't aware that Mr M had a CETV at that point. And that WPS had requested a CETV but were given the value that Mr M already had – and with the same guaranteed date of 25 March 2022. But again, I think the key point is that I don't think this misunderstanding caused WPS to miss the original deadline.

Mr M has referred to the delay between him first contacting WPS and the first appointment. The letter that the OPS' administrators sent to Mr M dated 24 December 2021 explained that the CETV was only guaranteed for three months and expired on 24 March 2022. It also explained that exploring a transfer could be a lengthy process and receiving financial advice itself could take six to eight weeks. It went on to provide estimated timescales for the other steps in the process. The letter said if the application or documentation was received by the administrators after the three-month guarantee period the CETV would be re-calculated. And that it could be a lower value.

So I think Mr M was reasonably alerted that the CETV was only guaranteed for a three-month period and the likely timescales for a transfer to be arranged. I realise that Mr M chased the firm because he hadn't heard back from it. And by the time of the first discussion about a potential transfer on 22 February 2022 there was only just over four weeks to the CETV deadline. Time was always going to be very tight from that point. Once WPS had met with Mr M and was aware of his circumstances it was effectively 'on the clock'. However prior to that I think Mr M ought reasonably to have been aware of the timescales involved. So if he wanted to try and ensure that he secured *that particular* transfer value (transfer values can increase or decrease) he had the option to use another advising firm which was able to provide advice at an earlier date – albeit I accept at the cost of that advice.

Putting things right

Fair compensation

WPS Advisory Ltd should contact the original OPS and ask it to confirm what CETV would have been given if it had been issued on 18 April 2022.

WPS Advisory Ltd should then obtain a notional value of what Mr M's personal pension would have been worth at the date of this decision, assuming it had received and invested the 18 April 2022 CETV on 27 June 2022.

WPS Advisory Ltd should compare this with the actual value of Mr M's pension at the same date.

If the notional value is higher than the actual value there is a loss. If there is a loss WPS Advisory Ltd should pay such an amount as is required into Mr M's pension plan to increase its value by the amount of the compensation.

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 it's not possible to pay the compensation into Mr M's pension, it should be paid directly to him. But had it been possible to pay into the pension, it would have provided a taxable income as well as tax free cash. Therefore, the compensation

should notionally allow for any income tax that would otherwise have been paid – the notional allowance should be calculated using Mr M's actual or expected marginal rate of tax at his selected retirement age.

Mr M took the maximum amount of tax-free cash available to him on 14 November 2022. WPS should pay 8% simple interest on the tax-free cash that was actually taken between 27 June 2022 and 14 November 2022 to recognise the time he was deprived access to those funds.

WPS Advisory Ltd should also pay Mr M £500 for the distress and inconvenience I'm satisfied the matter has caused him.

My final decision

My final decision is that I uphold Mr M's complaint.

I order WPS ADVISORY Ltd to calculate and pay compensation to Mr M as I have outlined under "Putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 9 August 2023.

David Ashley
Ombudsman