

The complaint

Mr M complained that he wasn't told/advised by Football League and PFA Administration Limited (who he's been told Howden Insurance Brokers Limited is now responsible for) that if he wanted to transfer his pension he needed to do so before his 35th birthday.

Mr M is professionally represented in this matter. But rather than differentiating between Mr M and the representative, for ease of reference I will just refer to Mr M.

What happened

Mr M was a member of the Football League Players Retirement Income pension scheme, which was administered by Aviva. If Mr M wanted to transfer away from this scheme he needed to do so before his 35th birthday. Once he turned 35 his only choice was to buy an annuity – either from Aviva or from another provider on the open market.

Mr M was contacted by a financial advisor (who I'll refer to as "Mr G") shortly after he turned 35. Mr G recommended that Mr M buy an annuity on the open market. Mr M followed the recommendation and bought an annuity with Canada Life.

In April 2019 Mr M made a claim to the Financial Services Compensation Scheme ("FSCS") against Football League and PFA Administration Limited about the suitability of Mr G's advice to buy the annuity. The FSCS declined the claim. It said Mr M only had two options – either buying an annuity from Aviva or buying it from another business on the open market – and Mr G had recommended the one with the better annuity rates. The FSCS later told Mr M that the option to transfer his pension ended once he turned 35.

In February 2021 Mr M made a second claim to the FSCS, again against Football League and PFA Administration Limited but this time about him not being contacted prior to his 35th birthday about transferring his pension. The FSCS didn't consider this complaint as it felt Howden might be able to deal with it.

In May 2022 Mr M complained to Howden about the failure to provide him with transfer advice before he turned 35. Howden felt Mr M had complained too late so it didn't comment on whether the complaint had any merit. It also disputed the FSCS's view that it was responsible for dealing with a complaint against Football League and PFA Administration Limited.

What I provisionally decided – and why

I issued a provisional decision which explained why I felt Mr M's complaint fell within our jurisdiction, and why I felt there were no grounds for it to be upheld.

In summary, I concluded that Mr M's complaint fell within our jurisdiction as he'd referred it to us within three years of becoming aware that he had a cause for complaint. But I concluded that Howden didn't treat Mr M unfairly in respect of him not being contacted before he turned 35 and/or by not giving him information about transferring the pension. This was because

based on the documentary evidence I'd seen and on what Mr M had told us I wasn't persuaded that Football League and PFA Administration Limited had done anything wrong.

Responses to my provisional decision

Mr M said:

- Football League and PFA Administration Limited didn't give him any advice – either before or after his 35th birthday
- he unsuccessfully tried to contact Football League and PFA Administration Limited before his 35th birthday
- only one business was involved
- the first contact about his pension options was with PFA Financial Management Limited, after his 35th birthday
- Football League and PFA Administration Limited was the source of the funds (hence reference to it on the documents regarding the purchase of the annuity); but PFA Financial Management Limited facilitated the transaction
- all contact with Football League and PFA Administration Limited and/or PFA Financial Management Limited was after his 35th birthday
- the complaint against Howden is that Football League and PFA Administration Limited should have advised him on his options and the significance of his 35th birthday before he turned 35.

Howden remained of the view that Mr M's complaint fell outside of our jurisdiction as it was referred to us too late. It said it wasn't in a position to comment on my conclusion about the merits of Mr M's complaint as it hadn't been provided with any of the documentation I'd referred to.

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.

Jurisdiction

Mr M first complained to Howden on 19 May 2022 and he referred the complaint to us on 10 August 2022. So his complaint will fall outside of our jurisdiction – on the basis that it was referred to us too late – if Mr M knew or ought to have known before 19 May 2019 that he had a cause for complaint about not being contacted before his 35th birthday.

I think it's clear from Mr M's correspondence with Canada Life that he's been unhappy with his annuity for some time. But I think that was more in respect of the advice on which annuity to buy and the fact that Canada Life wasn't flexible in changing the annuity payments once the annuity had been set up. And I think in this case that's an entirely separate issue to the complaint I'm being asked to decide.

From what I've seen, Mr M wasn't aware of a potential problem regarding advice he feels he should have received about transferring the pension (as opposed to buying an annuity) until December 2020 – when the FSCS referred to it when responding to the first claim. I haven't seen anything which suggests to me that Mr M was or should have been aware of this specific issue prior to 19 May 2019.

As Mr M referred his complaint to us within three years of December 2020, his complaint was referred in time and is one that I can decide.

The merits of the complaint

Mr M's complaint is that he wasn't advised/told before he turned 35 that if he wanted to transfer his pension he had to do so before he turned 35. He's asserting that it was Football League and PFA Administration Limited's responsibility to have given him that advice. I nevertheless think it's important in the context of the complaint to discuss the advice that was given and by who.

Throughout this matter Mr M has interchangeably referred to both Football League and PFA Administration Limited and PFA Financial Management Limited. These are two separate business entities. And even if the FSCS is correct that Howden might be responsible for Football League and PFA Administration Limited's actions, it doesn't automatically follow that it's responsible for PFA Financial Management Limited's actions.

My provisional decision was based on Mr M telling us that more than one business was involved and he was only contacted by Mr G after his 35th birthday. My conclusion was essentially that as Football League and PFA Administration Limited didn't become involved in this matter until after Mr M turned 35, it's unreasonable to hold it responsible for something Mr M believes should have happened before he turned 35. I don't think Mr M's response to my provisional decision changes things.

In an email to us dated 9 May 2023 Mr M said:

- before his 35th birthday his contact was with Football League PFA Financial Administration Limited
- he was only contacted by PFA Financial Management Limited after his birthday
- the complaint concerned a failure by Football League PFA Financial Administration Limited to advise him; it wasn't a complaint about advice actually given to him by PFA Financial Management Limited after he turned 35.

I think Mr M's reference to Football League PFA Financial Administration Limited was a mistake and should have read Football League and PFA Administration Limited. But, in any event, the email clearly says that two separate business were involved. In response to my provisional decision Mr M also intimated there were two businesses involved as he said all contact with Football League and PFA Administration Limited *and/or* PFA Financial Management Limited was after Mr M's 35th birthday. But that was slightly contradictory to him also saying that only one business was involved.

Mr M's first claim to the FSCS named Football League and PFA Administration Limited as the business entity the claim was being made against. It also named Mr G as the person at this business entity who gave the advice to buy the Canada Life annuity. And it said Mr G approached Mr M when he was about to retire from football. Both the complaint letter to Howden and our complaint form similarly named both Football League and PFA Administration Limited and Mr G. And they similarly said that Mr G approached Mr M as he was about to retire from professional football – but they now confirmed this was after his 35th birthday.

This tells me that Mr G worked on behalf of Football League and PFA Administration Limited; and that Mr G/Football League and PFA Administration Limited's first contact with Mr M was after he'd turned 35. But, as mentioned above, Mr M said in the email dated 9 May 2023 that his contact with Football League PFA Financial Administration Limited was *before* his 35th birthday; and *after* his 35th birthday it was with PFA Financial Management Limited.

He also said in response to my provisional decision he unsuccessfully tried to contact Football League and PFA Administration Limited before his 35th birthday.

I've seen various documents from the time Mr M bought the annuity:

- page six of what appears to be the annuity application form has Football League and PFA Administration Ltd stamped under 'Intermediary details'
- a letter from Canada Life dated 'as postmark' was addressed to Football League and PFA Adm Ltd and confirmed the application had been accepted and the annuity had started
- Canada Life's new business worksheet had Football League and PFA Administration noted as the 'Broker name'
- a Compulsory Purchase Annuity Personal Illustration for Mr M said the illustration was issued by Football League and PFA Administration
- a letter from Mr G to Canada Life dated 26 April 2005 – saying, amongst other things, that the completed application form was enclosed – was on Football League and PFA Administration Ltd headed paper.

I conclude from these documents that the advice to buy the Canada Life annuity was given to Mr M by Mr G on behalf of Football League PFA Financial Administration Limited. I think this conclusion is supported by the fact Mr M's claim to the FSCS about the advice to buy the annuity was made on the basis that the advice was given by Mr G/Football League and PFA Administration Limited.

In response to my provisional decision Mr M said Football League and PFA Administration Limited didn't give him any advice – before or after his 35th birthday. This isn't supported by the documents I've outlined above. And if, as Mr M now asserts, Football League and PFA Administration Limited never gave him any advice it makes his initial claim to the FSCS nonsense.

I've not seen any record of contact between Mr M and PFA Financial Management Limited – either before or after his 35th birthday.

So, to summarise the above, I conclude based on what I've seen and on what Mr M has said it's more likely than not:

- that two separate businesses were involved; and
- one of those businesses was Football League and PFA Administration Limited, but it didn't become involved until after Mr M turned 35.

I turn now to the specific complaint issue ie the advice/information Mr M didn't receive prior to his 35th birthday.

As outlined above, I'm not persuaded there was any contact between Mr M and Football League and PFA Administration Limited until after Mr M's 35th birthday. I can't therefore see that Mr M became a client of or had a consumer/business relationship with Football League and PFA Administration Limited until after he turned 35. So I don't think it's fair or reasonable to hold Football League and PFA Administration Limited responsible for advice or information given/not given before Mr M became its client.

Prior to his 35th birthday Mr M might have had a consumer/business relationship with another business entity. Whoever that relationship might have been with, I'm not persuaded that Mr M has sufficiently shown that it was with Football League and PFA Administration Limited. So I'm not satisfied that Football League and PFA Administration Limited acted

unfairly or unreasonably in failing to contact Mr M before he turned 35 and/or in failing to tell/advise him that if he wanted to transfer his pension he needed to do so before he turned 35.

Accordingly, I conclude that there are no grounds to hold Howden liable for Football League and PFA Administration Limited's actions/inaction.

In closing and for completeness, I appreciate the issue over whether Howden is actually responsible for Football League PFA Financial Administration Limited's actions (as alluded to by the FSCS) remains outstanding. However, as I've already concluded that there are no grounds to require Howden to compensate Mr M I don't feel it's necessary to investigate this particular point further.

My final decision

I don't uphold this complaint.

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.

Paul Daniel
Ombudsman