

## **The complaint**

The estate of the late Mr G complains that, because of its delays during the transfer process, WPS Advisory Ltd (WPS) didn't manage to complete the transfer of the late Mr G's Occupational Pension Scheme (OPS) benefits before he unfortunately passed away. It would like to be paid the remainder of the cash equivalent transfer value (CETV) figure - after the tax free cash (TFC) payment.

## **What happened**

The late Mr G belonged to a defined benefit OPS from June 1997 but decided he would take voluntary redundancy from his employer with effect from July 2020. The OPS noted he would receive an annual scheme pension of £14,539 from 20 July 2020, but it also noted that the CETV of his benefits was £437,026. This figure was guaranteed – initially - until 20 October 2020. Mr G also received a redundancy payment which he used to pay off outstanding finance and bills and to provide sufficient income until he could receive his full pension income.

Because WPS had a relationship to advise the OPS members it contacted Mr G to ask if he wanted to discuss matters. He then arranged a telephone appointment with WPS to discuss his options. It explained that he could either take his benefits from the scheme, transfer them to a drawdown plan or transfer to another personal pension and take a higher tax free cash sum and annuity from that plan. It was established that Mr G wanted to transfer his pension and draw an income as he was concerned – because of his health, that his family wouldn't benefit from the scheme in the event of his premature death.

Mr G decided to take his TFC and then receive a single life, fixed, enhanced annuity from a new provider. The annuity was guaranteed to be paid for 25 years.

Because of other factors that were happening within the scheme at this time the deadline for the expiry of the CETV was extended to 31 December 2020.

Mr G continued to chase the progress of his transfer and returned what he thought was the outstanding paperwork on 10 December. This was confirmed by WPS on 22 December 2020 when Mr G was informed his documentation would be passed to the OPS trustees. However, the transfer still hadn't been completed before Mr G sadly passed away in February 2021. The new receiving pension provider then confirmed that it wouldn't be able to accept the funds as a transfer – and if received it would be required to send them back.

Mr G's beneficiaries, as part of dealing with his estate, contacted the OPS trustees to find out what benefits would be paid. After some discussions the trustees said it would honour the amount of TFC (around £109,000) that the late Mr G was due to receive if he had transferred, but it said it would also have to pay the statutory spouses' pension as Mr G was legally still married at the time.

The beneficiaries didn't agree with this but during the process of questioning the outcome came to learn that WPS may have been culpable for delays which prevented the transfer being completed before Mr G passed away. So they complained to WPS.

Initially WPS said it had sent all the required paperwork to the scheme trustees and the new pension provider in January 2021 – and that the expiry deadline for the CETV had been extended to the end of March 2021. But the provider and trustees provided contradictory information so, as WPS hadn't provided a final response, the beneficiaries brought the complaint to us.

One of our investigators looked into matter and thought the complaint should be upheld. He made the following points to support his assessment:

- This advice was given during a chaotic time for the financial service industry. And there were other parties involved in this transfer with their own individual service standards.
- WPS said that the process should take around four and a half months to fully complete in normal circumstances. The new pension provider confirmed that it would usually request funds from the scheme in around 10-12 working days and would usually make the payment between 3 and 12 working days after.
- But WPS didn't pass the transfer discharge documents to the OPS until late January 2021 and couldn't prove it submitted the annuity application to the provider at all.
- So he didn't believe WPS had acted within a reasonable timeframe and thought the beneficiaries had missed out on the potential for 25 years' worth of income.
- He thought the beneficiaries had ultimately received the TFC that it ought to have done through the actions of the OPS. But he thought WPS needed to calculate the value of the annuity the beneficiaries would have received over 25 years after Mr G's death and compare against the capital benefits that the late Mr G's spouse will receive. If there is a loss it should be paid to the beneficiaries.

WPS didn't agree with the outcome. It questioned whether the timescales quoted by the new pension provider were for defined benefit or defined contribution transfers as it thought this transfer would usually take around two months based on the OPS' turnaround times at that stage. It said that of the cases it submitted on 22 January 2022 the quickest transfer to complete was around 10 weeks later.

So it thought that, as the investigator had concluded that Mr G passed away around halfway through the timeframe he had put together, this would mean that WPS could only be 50% responsible at worst and should only have to pay redress accordingly.

The investigator made a number of points in response to WPS' queries:

- This complaint was only against WPS, so although he'd asked the other parties involved in the transfer for a timeline of events this was simply to establish what he thought was reasonable. He'd used the starting point as 22 December 2020 when WPS said it was going to send off the necessary documentation.

Because this didn't happen, he didn't think it was reasonable to look any further into what the other parties could have done. Indeed the annuity application wasn't even sent to the new provider even though WPS said it was going to send it off shortly after its email of 22 December 2020.

- He hadn't considered the possibility of a 50% liability or responsibility here because it was solely WPS that didn't send the forms to the relevant parties in December 2020.
- Had Mr G not passed away when he did, it's very likely WPSA would have been able to process his application later on. But to consider that outcome WPSA would have

needed to have shown that it followed its own processes in terms of sending off paperwork – which it wasn't able to do here.

- Although he'd set out a window of opportunity for the annuity to be put in place this wasn't in expectation that any pension payments would be made. This simply reflected that if WPS had sent off the documents when it said it would he thought there was sufficient time for the annuity to have been in place – even if no payment was made – before Mr G's unfortunate passing.

WPS said that even if it sent the relevant forms off on 23 December 2020 it had provided evidence of other transfers from the same scheme taking at least ten weeks – and therefore well after the date of Mr G's death. It thought that even if it had acted according to the investigator's suggestions the annuity would still not have been set up in time. It asked for the matter to be referred to an ombudsman – including their possible consideration of the 50% redress liability. So the complaint was passed to me to review.

I've been made aware that the late Mr G's spouse has been receiving a monthly payment of £550.13 from the OPS since 1 November 2021.

### *My provisional decision*

In my provisional decision I said the complaint should be upheld. I made the following points in support of my findings.

- I started by looking at the situation after 2 December 2020. I found that WPS had sent Mr G a suitability report on 2 December and Mr G accepted its recommendation and signed an application form on 7 December 2020. WPS said it would send the application to the annuity provider on 22 December 2020, but it didn't appear to do so. I said that if WPS had sent the application when it said it would the transfer would have completed by mid-February to early March 2020, but that wouldn't have made it clear that the annuity would have been set up before Mr G died. I couldn't conclude that this delay – of around a month – meant Mr G's annuity would definitely have been set up before 25 February 2020.
- So I then looked at what happened before December 2020 or more precisely before Mr G returned the relevant documentation to WPS. I noted that Mr G first approached WPS about the transfer and had an initial meeting in July 2020, and WPS indicated that the transfer ought to be completed within four and a half months. So I wanted to see what had led to the delay in Mr G not having the necessary forms to return for around five months after the first meeting.
- I set out a timeline of events from July 2020 and I thought WPS had simply taken too long to get to the stage of issuing its suitability report in December 2020. I didn't think it had provided a robust explanation for why things took so long – albeit I accepted that WPS had its own process here which involved six separate stages. In particular I hadn't been presented with any reason why the suitability report couldn't have been issued shortly after the second transfer analysis comparison report (TVAS) of October 2020.
- I thought WPS could in fact have considerably reduced the time taken to get to the suitability report stage. When I included the one month delay I thought WPS had caused after December 2020, I took the view that it was reasonable to conclude that WPS ought to have been able to set up the annuity – even if the first payment couldn't be made - before Mr G's unfortunate passing.
- So I said that WPS should carry out a calculation to determine the amount of financial loss the late Mr G's beneficiaries had suffered. I didn't think they had suffered a loss relating to the TFC, or for any payments that might have been paid before Mr G's death. But I thought they would suffer a future loss from not receiving

annuity payments for the 25 year duration of the plan – although I said the calculation should offset the payments that the late Mr G's spouse has and would continue to receive from the scheme pension over the same term.

Initially WPS didn't agree with the provisional decision and set out its reasons – which were principally related to the “exceptional circumstances” it said it was working under during the global pandemic. It said:

- The administration team responsible for issuing advice reports was usually office based but was impacted by staff illnesses and office closures because of “deep cleaning” procedures. There were two of those such events during the process of compiling Mr G's report, each leading to office closures of around of two weeks. (so four weeks in total).
- The team had to adapt to working from home during this time, which also contributed to the delays.
- It had compared Mr G's transfer with others around the same time and didn't consider his was “*unreasonably long in comparison.*”
- Without the issues around office closures and working from home, it thought the advice aspect of this process could have completed within three months or less.
- It didn't believe there was another firm who could have completed the transfer any quicker in the circumstances – especially as it had the advantage of knowing the scheme and working closely with its administrators.
- Our website did suggest that we would take into account the impact of the global pandemic when considering complaints. It would welcome our view on this matter both for this complaint and as a wider issue.

However, WPS subsequently said it had reviewed and reconsidered its position and decided that it would like to make an offer to the beneficiaries along the following lines.

- “1. Obtain a fixed-term (for 25 years) annuity quote to establish the cost of 25 years of income at £14331.12pa.*
- 2. Obtain a lifetime annuity quote based on the net income Mr G's widow is receiving to determine the cost of this income.*
- 3. Make a payment to Mr G's family of the difference between these two figures.”*

It confirmed how it proposed to obtain the information required to carry out the calculation and also what information it would need from the scheme administrators. It then clarified that it would “capitalise” the final figures in order to obtain a final figure that it should pay.

Having clarified that the offer was broadly in line with that set out in the provisional decision, we put it to the beneficiaries. But, while they agreed with my provisional decision overall, the beneficiaries didn't accept the terms of WPS' offer and wanted us to issue a final decision.

### **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.

And having done so I see no reason to depart from my provisional findings. I have considered WPS' comments, particularly with regards to the effect of the global pandemic on its working practices and service and I've included my comments on that issue below. But ultimately I think that WPS should have been able to complete its part of the advice process

so that the annuity, more likely than not, was in place before Mr G died. I'll therefore set out my reasons below.

Our investigator reached the conclusion that if WPS had sent off the application forms that Mr G had returned on 7 December 2020 when it told him it was going to, then it was likely the annuity would have been set up before Mr G's death. So I began by looking at the situation that did occur just before and after 7 December 2020.

#### Post 2 December 2020

WPS' suitability report of 2 December 2020 set out a clear recommendation for Mr G to transfer his OPS benefits and purchase an annuity. Mr G accepted the recommendation and returned his acceptance and completed application forms on 7 December which WPS acknowledged receipt of on 22 December 2020. It said "*we have checked the documentation and can confirm that everything is in order. If any additional information is required, we will contact you as soon as any need is identified.... we will now send your application to the receiving scheme.*" It also said that it would submit the other documents required by the scheme after the 14 day cooling off period and expected completion of the transfer in around six to eight weeks.

I think that was a clear indication of the path forward from WPS, and even clearer that it would send the application form at that time, which would lead – by its own estimate - to a completion of around mid-February to early March 2021. I don't think it's possible therefore to reasonably conclude that Mr G's annuity would definitely have been set up by 25 February 2021 when he sadly died. It's possible this may have happened, but I can't discount the fact that it may not have been completed, probably by around two to three weeks using WPS' own estimates. I'm also mindful that WPS provided evidence to show that other similar transfers took no less than 10 weeks to complete.

But the most important point here is that WPS didn't submit the application form or other documents when it said it was going to. Evidence would suggest the paperwork required by the scheme trustees wasn't sent until January 2021 and the application form to the provider wasn't sent at all. So while I can't definitively say that Mr G's annuity should have been in place before his death as a result of this delay, I can put reasonable weight on WPS' own estimates of when the transfer ought to have completed if it had sent the forms when it said it would. I think it's reasonable to conclude that if the annuity hadn't been in place before his death, it should have been no later than three weeks afterwards.

So in order to look at the fuller picture of whether WPS caused delays which might have led to the annuity being in place much earlier, I've gone on to consider what happened prior to 2 December 2020.

#### Pre 2 December 2020

Mr G initially approached WPS in July 2020 and a first telephone information gathering interview took place on 23 July 2020.

At this point WPS indicated an overall transfer completion time of around four and a half months.

As WPS was the designated adviser for the scheme it would have been aware of the various deadlines that were in place regarding individual CETV's. In addition, it would have had a working knowledge of any additional requirements the scheme would be likely to ask for and a good idea of the current timescales. Of course, I am mindful of the effect that the global pandemic would have had on all these timescales – which I'll return to later.

In my provisional decision I set out a timeline of events, based on the evidence I'd been presented with – following the July 2020 meeting. I'll set this out again below.

- 2 September 2020 – the new pension provider confirmed that enhanced annuity terms were available and provided a personal illustration guaranteed for 14 days.
- 10 September 2020 – Mr G asked WPS if there had been any progress with his transfer as he'd returned the annuity information two weeks previously.
- 22 September 2020 – Mr G had a telephone discussion with WPS during which an adviser said *"should be completed mid-November I wouldn't expect it to go past December. (The OPS) are working on a six week turnaround so it's going to be about 10 weeks."*
- 14 October 2020 WPS said its recommendation report was in the process of being completed. It confirmed that *"we will ensure that you have sufficient time to receive the report and relevant documentation and return this before the revised guarantee date of 30 November."*
- 4 November 2020 – WPS said it was aware of the deadline of 30 November 2020 and was aiming to provide a recommendation report two weeks in advance of that date.
- 30 November 2020 – Mr G requested an update from WPS stating *"I am getting really concerned at the lack of movement and the fact that the report was 'in the process of being completed' on Oct 14th, but I have yet to receive anything? I have been informed that (the OPS) have put a FINAL extension date of 31st December for this process to be finalised. As I mentioned in my last email, it is now becoming financially difficult over this period, and I'd have expected this process to be further forward after nearly 4 months."*

WPS had a six step process when undertaking a transfer and we wouldn't usually comment on a firm's normal everyday processes and systems. So while I understand the need to work through each stage of its process, I've used the timeline to decide if I think some of the time it took to complete certain tasks was excessive and could be seen to have caused avoidable delays. I've also taken into account that WPS' own initial estimates of the time the whole process should take was four and a half months, and I haven't seen any evidence to show that it revised this estimate. I think Mr G was, to some degree, entitled to rely on this information so I would expect to see a robust explanation from WPS for why it took five months from when it first spoke to him until it produced its recommendation through a suitability report.

But I haven't been presented with any evidence to explain such a long delay or to provide a robust justification for why things took so long in the case of Mr G's transfer. I'm mindful that WPS had to liaise with other parties here, but the annuity provider issued its enhanced annuity illustration in early September 2020 and TVAS reports were produced on 12 August and 6 October 2020. So it's not clear to me, nor have I seen a satisfactory explanation for why WPS couldn't have compiled the suitability report soon after the later date – which was almost two months before it did finalise it.

I think WPS could have shortened the time it took to provide its suitability report considerably and it hasn't provided any evidence to counter that claim.

And when I consider that it expected the whole process to be completed in around four and a half months I think that WPS caused delays which, if they had been avoided, would have meant that the late Mr G's annuity would otherwise have been set up well in advance of his unexpected passing.

I wasn't able to conclude that the late Mr G's annuity would *definitely* have been set up before his death as result of the delays after December 2020, by a matter of around two to three weeks. But if I also include the delays that I think occurred prior to 2 December 2020, particularly the two months from the date the second TVAS was completed until the suitability report was issued, I think it's reasonable to say that, more likely than not, the annuity would have been purchased and in force before Mr G's death – even if payments hadn't been paid by that time.

### The effects of the global pandemic

Before it made an offer to settle the complaint WPS had suggested that many of its problems had been caused by the restrictions and change in working practices cause by the global pandemic. It cited office closures caused by deep cleans, and the problems of staff working from home as justifiable reasons for "gaps" in its service and taking longer to complete certain tasks – such as compiling reports.

And WPS is right to point out that our website does state that we will take the effects of the global pandemic into account when making our decisions – which I'm satisfied both I and the investigator did in this case. I'm mindful of the difficulties firms faced during these times and how they may have affected their ability to provide existing levels of service including their timeliness. But in this case what I would have expected to see was some degree of mitigation, explanation of the issues, and efforts to manage Mr G's expectations of the situation - specifically with reference to the effects of the pandemic. But I haven't seen any update or communication from WPS where this was signposted to Mr G. I note each response from WPS during September, October, and November 2020, when it would have been fully aware of the effect of the pandemic on its service, simply confirmed that it expected to provide the report well before the deadline.

I'm mindful that WPS has demonstrated that the closure of its offices occurred shortly after it confirmed that expectation, and I understand this may have caused some problems. But WPS said its staff were working from home during this time, so I would have expected them to have updated Mr G with this information, revising his expectations and setting out any contingency plans. In the absence of any such communication I think Mr G was entitled to expect WPS to work to the timescales it had given him.

But in any case I said previously that I hadn't been provided with a robust explanation for why the report couldn't have been completed soon after the second TVAS from 6 October 2020 was issued. Even allowing for the specific issues of the office closures during November 2020, I still think the report should have been compiled before that event.

### **Putting things right**

In my provisional decision I said that I didn't think the beneficiaries had suffered a past loss because I didn't think Mr G would have received any annuity payment before his death. And it's generally accepted here that no loss of TFC was suffered because the scheme paid the full amount to the beneficiaries as a gesture of goodwill.

So to put things right WPS needs to carry out a calculation to work out the *future* loss the beneficiaries will suffer.

But because Mrs G is receiving payments from the scheme directly I have to take into account that some payments will be (and have already been) made in consideration of Mr G's death. I don't have any powers to stop those payments being made and indeed to do so would almost certainly lead to unauthorised payments being made with the tax implications that would bring. And the beneficiaries have confirmed that they have no issues

with payments being made to Mrs G.

I'm not able to give any indication of how much the redress will be reduced following the comparison with the payments to Mrs G from the scheme – which will of course be increased each year in line with the scheme rules. So what I've set out below is, in my view, the fairest way to ensure the redress is calculated in a way that means the beneficiaries and Mrs G aren't overcompensated by taking into account the payments that are already being made.

WPS should compare the value of the benefits that would have been in place with the benefits that are instead being paid to Mrs G.

So, to compensate the beneficiaries fairly WPS should calculate the total capital value of the late Mr G's lost annuity over 25 years – that is, the amount required to buy that net annuity - and obtain a calculation to establish the capital value of the benefits that Mrs G receives – again, the amount required to buy that net pension income. If the value of the late Mr G's missing annuity is greater than the capital value of the benefits being received, then the beneficiaries have suffered a loss, and should be compensated for that difference.

WPS should in that instance pay a quarter share of the loss to each of the beneficiaries who have brought this complaint.

### **My final decision**

For the reasons that I've given I uphold the beneficiaries' complaint against WPS Advisory Ltd.

WPS Advisory Ltd should pay any compensation amount calculated as set out above and the calculations should be provided to the beneficiaries in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G, Mr G, Miss G and Miss G to accept or reject my decision before 23 November 2023.

Keith Lawrence  
**Ombudsman**