

## Ombudsman's Determination

Applicant	Mr S
Scheme	Rival Services Limited Pension Scheme ( <b>the Scheme</b> )
Respondent	Countrywide Assured Plc ( <b>CA</b> )

### Complaint Summary

1. Mr S complained that CA quoted an incorrect tax-free cash value of £93,848.36 for his two occupational pensions in a letter dated 11 December 2019. Mr S said this caused a delay in the transfer of the pensions, resulting in a reduction in the transfer value. CA then said it would honour a previous fund value by way of apology for the error. Having made this commitment in writing, CA subsequently withdrew its offer.
2. Mr S said the value of his pensions with CA fell in value while these issues were resolved.

### Summary of the Ombudsman's Determination and reasons

3. The complaint should be upheld against CA because, but for its negligence, Mr S would not have suffered a financial loss. CA issued incorrect information to Mr S on more than one occasion, breaching its duty of care to Mr S and causing an unreasonable delay in the transfer of his occupational pension to his Fidelity SIPP. This caused a reasonably foreseeable financial loss to Mr S of £14,921.47. This amount being the difference between the transfer value on 25 February 2020 and 1 June 2020.
4. CA have already made a payment of £1,000 to Mr S in recognition of the distress and inconvenience caused, which I find is adequate and so no further award in this respect is necessary.

### Detailed Determination

#### Material facts

5. The sequence of events is not in dispute, so I have only set out the key points. I acknowledge there were other exchanges of information between all the parties.
6. Mr S joined the Scheme in October 1988.

7. Within the Scheme Mr S had four pension plans:-
  - Occupational (Executive) Pension KT\*\*\*\*\*KA.
  - Occupational (Executive) Pension KT\*\*\*\*\*KB.
  - Personal Pension Plan KV\*\*\*\*\*KX.
  - Personal Pension Plan KV\*\*\*\*\*KYA.
8. On 21 November 2019, Mr S telephoned CA and explained that he was considering his retirement options. During this call Mr S said that:-
  - He wanted to take 25% of all four of his pensions immediately and draw an income from the remaining 75% in either April 2020 or April 2021.
  - He wanted flexibility in how much income he could draw each year.
9. The call handler explained that this was not possible and he could only take the whole value as a lump sum, with 25% being tax-free. This was because CA could not offer him flexible drawdown or an annuity. If these were his preferred options he would have to transfer the whole value of the pension plans to another provider. Mr S requested option packs and transfer forms for all four pensions plans.
10. On 28 November 2019, CA sent option packs and transfer forms to Mr S for all four pension plans.
11. On 11 December 2019, CA wrote to Mr S regarding his two occupational pension plans. The letter confirmed receipt of a 'member information form' and 'benefits with other pension provider' forms. It quoted the transfer value of his occupational pensions as at 30 May 2019 as £139,665.48. It also quoted: "25% of total transfer value as at 11 December 2019" as £34,916.37 and "the maximum tax-free cash payable as at 11 December 2019 after prescribed increases is £93,848.36. We confirm that your maximum tax-free cash lump sum is higher than 25% of your total transfer value".
12. On 30 December 2019, Mr S telephoned CA to confirm the tax-free cash figures in the 11 December 2019 letter were correct and was assured that they were. Based on the figure being approximately double what he had expected from all four pension plans combined, he has said he only needed to transfer his occupational pensions to access the amount of tax-free cash he required. He had received his retirement pack and informed CA that he wanted to take the maximum tax-free cash and lifetime annuity from his occupational pension plans. He no longer needed to access the tax-free cash from his personal pensions funds at this time so did not need to transfer these to another provider.
13. Mr S decided to transfer his occupational pension plans to Legal & General. During January and February 2020, the relevant Open Market Option (**OMO**) forms were

sent out, completed and returned to CA to process Mr S' annuity application. His OMO claim form was received on 24 February 2020.

14. On 3 March 2020, Mr S telephoned CA to check the progress of his transfer to Legal & General. CA informed Mr S that the maximum tax-free cash amount of £93,848.36 quoted in its letter of 11 December 2019 was incorrect. It explained an error had occurred as his remuneration for one tax year (2004/5) had been input incorrectly and because his concurrent benefits with Standard Life were not taken into account. The correct tax-free amount should have been split between the two providers. The correct figure was £34,916.37 (25% of the 11 December 2019 fund value).
15. CA said, by way of apology for its error, it would honour the transfer value of 25 February 2020, the day after his claim form was received, should he decide to transfer to another provider. That amount was £143,765.34. Mr S was told the current value would otherwise have been £133,869 due to market volatility. The CA employee said he needed to obtain authorisation from his manager to keep this transfer value open and confirmed by way of a second telephone call to Mr S on the same day that the arrangement had been authorised.
16. On 4 March 2020, CA wrote to Mr S to confirm the conversations from the previous day. It confirmed that the maximum tax-free cash amount quoted in its letter of 11 December 2019 was incorrect. It said the correct amount was now £35,941.34, which was 25% of the fund and transfer value at 25 February 2020. It apologised for its error and said:

“Under the circumstances, if you decide that you wish to transfer the value of your policies to another Registered Pension Scheme rather than proceed with the [OMO], [CA] are happy to use the same fund value that would apply to the [OMO] (£143,765.34). We have enclosed the necessary transfer form should you wish to transfer your benefits.”
17. On the 24 March 2020, Mr S submitted a completed application form to transfer the £143,765.34 to a Self-Invested Personal Pension (**SIPP**) with Fidelity International (**Fidelity**).
18. On 30 March 2020, Mr S telephoned CA to inform it he wanted to transfer his occupational pension plans to Fidelity. He said he wanted to make sure the correct fund value of £143,765.34 was transferred and did not want any more errors.
19. On 8 April 2020, CA telephoned Mr S to inform him that it could not honour the transfer value of 25 February 2020 due to a significant drop in value caused by Covid-19. Instead, it offered a £550 distress and inconvenience payment to Mr S.
20. On 9 April 2020, CA wrote to Mr S to confirm further details following the telephone call of the previous day. It said:-
  - The CA employee who Mr S spoke with on 3 March 2020 did not have the authority to agree to honouring the 25 February 2020 transfer value.

- It could not pay more than the correct tax-free cash amount of 25% of the fund due to HMRC rules.
- It agreed misinformation had been provided to Mr S on two occasions.
- A distress and inconvenience payment of £1,000 had been paid to Mr S (replacing the earlier £550 offer) in respect of the errors in the 11 December 2019 letter and for incorrectly informing him it would honour the 25 February 2020 value.
- It rejected a third aspect of his complaint, regarding its errors delaying Mr S transferring out his personal pension plans and that they had subsequently lost value. CA said Mr S had not contacted it about these policies since transfer forms were sent out in November 2019.

21. On 18 April 2020, Mr S wrote to CA as he was unhappy with how it had investigated his complaint. Mr S explained that he thought of his four pension plans as “a single pot, as both were connected to [his] employment as a director of Rival Services Limited.”
22. In the same letter Mr S said he had taken out short term loans in February 2020 to fund purchases and had intended to repay these loans with the £93,848.36 tax-free lump sum he was expecting in March 2020. With reference to his conversations with the CA employee on 3 March 2020 about “the promised transfer value for [his occupational] pension[s]”, Mr S said “[The CA employee] and I did not talk about CA making a similar offer of a reasonable transfer value for my personal pension[s]. I put my trust in the complaint investigation by Customer Relations coming up with that”. Mr S said in this letter he believed that the transfer of £143,765.34 was “in progress at the time of writing.”
23. On 4 May 2020, CA responded to Mr S. The letter included the following:

“The £1,000 offered is a substantial level of redress based on the added time you have had to spend on researching your retirement options and also the stress, frustration and uncertainty we have caused you due to our two errors.”

...

“When [our employee] agreed to offer you the transfer values of 25 February, on 3 March, the difference in the values of your two occupational policies was £9,896.34. Although [our employee] spoke to a member of our Technical Team about this, [they] didn’t obtain authority to guarantee these values from any member of staff with the appropriate authority limits. ...[Our employee] failed to realise that if and when the transfer forms were returned by you, this would be a different transaction to the [OMO] and the values of your policies would need to be recalculated. The offer was not a ‘cast iron’ offer, it was a mistake, as the values on your policies are still invested in the Managed Pension Fund.

...

...We can't be held responsible for any drop in values due to COVID-19. The Coronavirus pandemic has had an unprecedented effect on the world in many ways, not least on financial markets."

24. On 6 May 2020, Mr S wrote to CA. He said that if CA had not given him incorrect information in its letter dated 11 December 2019, "the unit holdings in both my executive pension scheme and my personal pension scheme would have sold and cash value would have transferred out in January 2020". He argued that CA should honour the 25 February 2020 transfer values for both his occupational pension plans (£143,765.34) and his personal pension plans (£52,766.94) at the time he was to transfer out the policies.
25. On 1 June 2020, CA wrote to Mr S confirming the transfer value for his occupational pension plans, £128,843.87, had been sent to Fidelity.
26. On 9 June 2020, Mr S wrote to CA querying why the transfer value paid was £128,843.87 rather than "the promised sum" of £143,765.34.
27. Mr S has confirmed that the short terms loans he referred to taking in February 2020 was one loan facilitated by a temporary overdraft from Rival Services Limited Directors Account funded by retained profits within the annual accounts of Rival Services Limited. He did not incur any charges or interest for the loan as he borrowed these funds through his own business' temporary overdraft.

### **Summary of Mr S' position**

28. Mr S is unhappy that CA quoted an incorrect tax-free cash entitlement amount from his occupational pension plans in its letter of 11 December 2019. Based on being wrongly informed the figure was approximately double what he had expected from all four pension plans combined, he thought that he only needed to transfer his two occupational pension plans to access the amount of tax-free cash he required. He thought he no longer needed to access the tax-free cash from his two personal pension plans at this time so did not transfer these to another provider. Had he been quoted the correct, and much lower, tax-free cash amount he would have transferred all four of his plans to another provider to access the funds.
29. He wasted time and effort researching OMO annuities which he was no longer proceeding with.
30. CA should have honoured the 25 February 2020 transfer value of his occupational pension plans as it said it would in March 2020 in recompense for the mis-quote of his tax-free cash entitlement.
31. The value of his personal pension plans fell during the complaints process. CA should honour the 25 February 2020 transfer value of £52,766.94 for these policies because they would have been transferred sooner and have lost value due to CA's error.

### **Summary of CA's position**

32. CA misquoted the maximum tax-free cash entitlement amount in its letter of 11 December 2019.
33. It could not pay more than the correct tax-free cash entitlement, 25% of the fund value, due to HMRC rules.
34. It cannot honour the 25 February 2020 transfer value of his occupational pensions. Its offer was made in error.
35. It has apologised to Mr S for these errors and paid him £1,000 for the distress and convenience caused to him.
36. Mr S has not contacted it about his personal pension plans since transfer forms were sent to him in November 2019. It therefore rejects the contention that it caused a delay in the transferring of his personal pensions and any subsequent fall in the transfer values.

### **Adjudicator's Opinion**

37. Mr S' complaint was considered by one of our Adjudicators who concluded that part of the complaint should be upheld on the basis of negligent misstatement. The Adjudicator's findings are summarised in paragraphs 38 to 53 below.
38. To uphold a claim for negligent misstatement, it must be proved, on the balance of probabilities, that CA owed Mr S a duty of care, that CA breached that duty of care and that Mr S suffered a loss that was caused by CA's breach of duty. It must also be proved that the loss fell within CA's scope of duty of care and was a foreseeable consequence of the breach of the duty.
39. A three-fold test<sup>1</sup> is traditionally applied when confirming whether a duty of care exists on the part of the respondent. Taking into consideration CA's response to Mr S dated 4 May 2020, in which it accepted that it had made errors, the Adjudicator considered that CA accepted that it owed Mr S a duty to provide him with the correct information and that in not doing so it breached its duty of care.
40. The Court<sup>2</sup> had also looked at whether a professional organisation had assumed responsibility for its actions and whether an individual could rely on the information they had been given. Bearing in mind that Mr S had contacted CA with the intention of transferring out his pension plan in November 2019, that CA provided him with information on the 11 December 2019 and that this was confirmed as being correct on the 30 December 2019, the Adjudicator concluded that CA had taken responsibility for its figures.

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<sup>1</sup> House of Lords in *Caparo v Dickman & others* [1990] UKHL 2

<sup>2</sup> (*BCCI (Overseas) Ltd (In Liquidation) v Price Waterhouse* [1998] BCC 617)

41. The Adjudicator said that having sought confirmation from CA on 30 December 2019 that its figures were correct it was reasonable that Mr S relied on this assurance and in doing so changed his plans to transfer all four pensions, to instead purchase an annuity by way of the OMO. In the Adjudicator's opinion, the incorrect information delayed Mr S from proceeding with a transfer of his occupational pensions, resulting in his financial loss.

42. Having established that a duty of care existed it was necessary to consider whether Mr S' loss was caused by CA's breach of that duty of care. To do so there was a two-stage test as follows:

**Factual** – "but for" CA's actions would Mr S have suffered a loss?

**Legal** – Mr S can only recover the loss if it was within the scope of CA's duty to him and that this was reasonably foreseeable.

43. To establish if there had been a breach of the duty of care the question was whether Mr S would have progressed and transferred his funds if he had been given the correct information on both the 11 and 30 December 2019 and if so, would he have incurred the loss that he had claimed. If so, the second 'Legal' stage had to be proved.

44. The value of Mr S' pension funds were subject to market forces and his funds fell in value between January 2020 and June 2020. Mr S said that if CA had provided him with the correct information in respect of the tax-free cash available to him on 11 December 2019, a transfer of his pensions would have been completed by the end of January 2020. In the Adjudicator's opinion it was not possible to be totally sure that this was what Mr S would have done, however, his subsequent action in transferring to Fidelity did indicate that it was likely that he would have transferred at least one of his pension plans sooner if given the correct information. The fact that he initially pursued the OMO certainly showed that he would have been proactive in taking action to access tax-free cash.

45. Based on the timescales of Mr S' actual transfer to Fidelity which he began on 24 March 2020, and which was finalised on 1 June 2020, the Adjudicator considered it more likely that a transfer request made on or after 30 December 2019 would not have been completed until the end of February 2020.

46. As well as causing an unnecessary delay in the transfer, CA's commitment to honour the £143,765.34 as detailed in its letter dated 4 March 2020, showed that the provision of correct information was within CA's duty of care to Mr S and that a loss was foreseeable, otherwise it would not have made the promise that it did with no caveats. The fact that this promise was withdrawn was a further breach of CA's duty of care.

47. While the Adjudicator agreed with CA that it could not be held responsible for fluctuations in the market value of Mr S' fund, it could be held responsible for providing incorrect information that Mr S relied on when making his decisions.
48. Mr S' actual financial loss crystallised when he withdrew tax-free cash from his Fidelity SIPP. He took 25% of the 1 June 2020 transfer value of £128,843.87 (£32,210.72) as tax-free cash after he transferred his CA pension plans to Fidelity in June 2020, but did not access any of the taxable income. The remaining 75% of the transfer value was invested in a way that might further increase in value, meaning that any future loss or gain was not attributable to CA.
49. If the higher (25 February 2020) transfer value of £143,765.34 had been paid to Mr S' SIPP, he would have taken £35,941.34 tax-free cash. So, in the Adjudicator's view, his actual financial loss was £3,730.37.
50. Other than the difference in the value of the 25% tax-free cash amount that Mr S accessed, the remaining difference in the value of the transfer value was a loss of expectation.
51. The Adjudicator considered there was no extrinsic contract between Mr S and CA for it to provide a transfer value of £143,765.34 as the necessary elements for a contract were not found; namely, offer, acceptance, consideration and the intention to enter into legal relations. In particular, there was no evidence that CA intended to enter into legal relations to pay Mr S the backdated transfer value.
52. Mr S was advised on 3 March 2020, that the quoted £93,848.36 tax-free figure was incorrect. This left him time to consider his options and transfer his personal pension plans if he wished to do so. It was not apparent why Mr S did not transfer his personal pension plans to Fidelity at the same time as the occupational pension plans and for this reason the Adjudicator did not consider that CA's actions caused any loss in respect of the personal pension plans. In the Adjudicator's opinion, Mr S' complaint that the provision of incorrect information meant that he did not proceed with the transfer of his personal pension plans could not be upheld.
53. CA paid £1,000 to Mr S for distress and inconvenience caused. This was reasonable in the circumstances. So, it was unlikely that the Ombudsman would direct a higher award for this.
54. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr S provided his further comments which are summarised below:-
  - A typography error in paragraph 52 of the Opinion showed the value transferred from CA to his Fidelity SIPP in June 2020 as £128,842.87, rather than the correct figure £128,843.87.
  - The recompense for his financial loss should be £14,921.47; the total difference between the 25 February 2020 transfer value (£143,765.34) and the 1 June 2020 transfer value (£128,843.87).

- He has provided annual pension benefits statements for 2020, 2021, 2022 and 2023, showing his Fidelity SIPP holds £96,632.91 in cash. This is the £128,843.87 transferred from CA, minus the 25% tax-free cash drawn in June 2020.

55. CA did not respond to the Adjudicator's Opinion.

## Conclusions

56. Mr S was entitled to receive information that he could rely on when making decisions regarding the transfer of his pensions. On 11 December 2019, CA incorrectly quoted Mr S a maximum tax-free cash figure of £93,848.36 and it was not until the 3 March 2020 that, upon checking the progress of his transfer, Mr S was told by CA that the information it had provided Mr S was incorrect. Recognising this error, CA wrote to Mr S on the 4 March 2020 confirming that it would honour a transfer value as at the 25 February 2020 of £143,765.34. CA subsequently withdrew this commitment to Mr S on 8 April 2020.
57. Having considered the submissions of both parties, I agree with the Adjudicator's Opinion that negligent misstatements were made by CA, causing an unreasonable delay in the transfer of Mr S' occupational pension and a reasonably foreseeable loss.
58. I am satisfied that Mr S' reliance on the information provided to him on the 11 December 2019, and CA's written offer of the 4 March 2020, to provide a transfer value of £143,765.34 was reasonable in the circumstances. In respect of the original information provided on 11 December 2019, CA confirmed that the information was correct in a telephone call with Mr S on 30 December 2019. CA's written confirmation of the transfer value dated 4 March 2020, also followed a telephone conversation on 3 March 2020, when CA admitted its original mistake. The errors made by CA are a clear breach of the duty of care that it owed to Mr S, as the manager of his pensions, to provide accurate information and clearly amount to negligence. I next need to consider what loss Mr S has suffered as a result.
59. In this respect, I do not agree with the Adjudicator that the financial loss Mr S incurred because of CA's maladministration is the difference between the 25% tax-free cash which he took and the 25% tax-free cash he would likely have taken had the higher transfer value applied, for the reasons which follow.
60. The starting point of compensating Mr S for the loss that he has suffered is to put Mr S back into the position he would have been had the misstatements not been made. Turning to when Mr S would have transferred his pension if CA had provided him with the correct information. I consider that, on the balance of probabilities, Mr S would have transferred to his Fidelity SIPP at the end of February 2020, at a value as identified by CA of £143,765.34. I say this because CA's records show that it had received completed OMO forms from Legal & General on the 24 February 2020 and that CA had committed to honouring a fund value 'as at 25 February 2020' (see paragraph 15 above), if Mr S wanted to transfer out to a different provider, therefore, showing that this was practically possible.

61. So, rather than when Mr S accessed his 25% tax-free cash, in my view Mr S' loss crystallised at the point he transferred his occupational pension to his Fidelity SIPP. That date was 1 June 2020 when Mr S transferred £128,843.87. As identified above, but for CA's errors, the transfer should have taken place when the transfer value was £143,765.34.
62. I therefore agree with Mr S' contention that the financial loss amounts to £14,921.47. That being the difference between the February 2020 transfer value (when Mr S would have transferred) and the June 2020 transfer value (when he did transfer). I find that this was a reasonably foreseeable loss.
63. I do not consider that Mr S has contributed to the loss and, in my view, it was reasonable for Mr S to transfer his pension in June 2020 taking into consideration that he first sought information from CA in December 2019.
64. In deciding upon the appropriate level of award for distress and inconvenience, I have taken into account the individual circumstances of the case including the maladministration by CA and how long it took to resolve its errors.
65. CA's initial error in December 2019 of misquoting the maximum tax-free cash payable was compounded by its attempts to resolve the situation. On 3 and 4 March 2020, it incorrectly led Mr S to believe it would honour a higher out of date transfer value by way of apology. Mr S was under this false impression until 8 April 2020.
66. I have no doubt that this matter has caused Mr S serious distress and inconvenience, the appropriate award for which is £1,000. This amount has already been paid to him by CA so I will be making no further direction.
67. I uphold Mr S' complaint.

## **Directions**

Within 28 days of the date of this Determination, CA shall pay £14,921.47 into Mr S' Fidelity SIPP in respect of the financial loss he has incurred.

**Dominic Harris**

Pensions Ombudsman  
3 May 2024