

## **complaint**

Mr T has complained that Intrinsic Financial Planning Ltd delayed the transfer of his Occupational Pension Scheme (OPS). He says this resulted in him receiving a lower transfer value than he was originally quoted.

## **background**

In September 2016, Mr T enquired about a transfer value of his OPS. At this time, the Cash Equivalent Transfer Value (CETV) was just over £780,000.00. This was guaranteed until mid-December 2016.

Mr T received advice from a financial advisor in October 2016. The financial advisor worked for a firm who I'll refer to as "D". He also paid a fee to D for its services to complete the transfer of his OPS to his existing Self Invested Personal Pension (SIPP).

The transfer forms were completed and D said it sent them to the SIPP providers shortly after this meeting. But the SIPP providers didn't receive it.

At the same time of handling Mr T's transfer, D was sold to Intrinsic. The sale completed in November 2016, and at this point Intrinsic acquired D and all of its customers. It also took responsibility for its back book liability.

A couple of days before the deadline, the SIPP providers got in touch with Mr T to chase his forms. Mr T made the financial advisor from Intrinsic aware the forms hadn't been received.

Intrinsic said it was chaotic at the time of taking over D. New processes had to be learnt without training, on top of dealing with its normal workload. It's said that it would be normal for the administration department to chase for an update on cases like Mr T's after fourteen days. But that didn't happen.

Ultimately, the paperwork wasn't received in time and therefore the CETV expired.

A new transfer value was requested and the price had decreased by over £30,000.

Mr T continued with the new transfer value – he wanted to invest. He gave Intrinsic authority to make the transfer on his behalf in early April 2017 by completing the transfer forms. And it completed with the funds being transferred a few days later.

Mr T wasn't happy his original transfer didn't complete – and as a result he lost around £30,000. So he made a complaint to Intrinsic. It admitted it made some mistakes, but didn't feel it should take full responsibility. That's because it feels Mr T should take some responsibility himself because of his previous experience as a financial advisor. It also thinks Mr T should've done more when he knew the deadline was approaching and the transfer forms hadn't been received. Mr T remained unhappy so he brought the complaint to us.

Our investigator felt the complaint should be upheld. She thought Mr T had been financially disadvantaged due to the lack of actions from Intrinsic. And that's because the transfer didn't complete in time which meant Mr T suffered a loss by the decrease of transfer value. So she asked Intrinsic to put Mr T back into the position he would've been in, had the transfer completed in time. Intrinsic disagreed.

I sent a provisional decision on 19 October 2017 to explain why I thought the complaint should be upheld. I gave the parties until 2 November 2017 to send me anything else to consider. Intrinsic responded saying it didn't have anything further to add.

Mr T responded and gave further information on how he intended to invest the funds if the transfer completed when it should've done. Mr T believes using a benchmark client in a similar position to him at the time the transfer should've completed would be a more accurate methodology to use. He also gave further information on his tax position for me to consider – and feels a tax rate of 7.8% would be more appropriate.

Following my provisional decision, I made some further comments about the tax free cash element. I let both parties know that I thought the appropriate way to address the loss surrounding the tax free cash, would be to give the return on the tax free cash on where it is currently invested for the period of the delay.

Mr T responded to this and said he took all of the tax free cash available to him from his SIPP but hasn't yet invested it. He provided evidence of what his intentions were if the transfer took place when it should've. Mr T said around £50,000 of the tax free cash would've remained as cash and around £30,000 would've been invested into an ISA immediately. And a further £40,000 would've been invested in the future.

Intrinsic responded and mainly agreed with my initial thoughts. It said if Mr T was going to invest in the way he said he would've done, then at least some of the tax free cash would be invested now.

I've thought very carefully about the points made by both parties in response to my provisional decision and subsequent correspondence.

### **my findings**

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

When Mr T enquired about transferring his OPS to a SIPP, he was told by the SIPP provider to get financial advice.

At this point, Mr T agreed to pay a fee for a financial advisor to give him advice, and deal with the transfer for him. Therefore, I think it's reasonable for Mr T to expect Intrinsic to ensure the transfer was completed in time. I've taken into account what Intrinsic has said about Mr T – that he should hold some responsibility as he used to be a financial advisor. But Mr T paid Intrinsic to deal with the transfer for him – and it agreed to do that. So, it was Intrinsic's responsibility to ensure the transfer completed in time – not Mr T.

Intrinsic said, in its final response to Mr T that it didn't become aware the paperwork hadn't been received until after the guarantee date of the CETV had expired. But I've seen email correspondence between Intrinsic and the SIPP provider from November 2016. That email correspondence highlights that the forms hadn't been received. And Mr T also made Intrinsic aware a couple of days before the deadline date. So I don't agree Intrinsic wasn't aware that the transfer paperwork hadn't been received..

It's also said there was miscommunication from all parties. And it said Mr T didn't ask if the forms had been received. It thinks he should've showed more concern. I've already

explained why I don't think Mr T should hold any responsibility for the transfer – and that's because he paid Intrinsic to handle it.

But even so, Mr T did get in touch with the advisor a couple of days before the deadline date to ask what was going on as he hadn't heard anything. And as soon as he became aware all the paperwork hadn't been received, he told the advisor from Intrinsic as she was handling the transfer on his behalf. Therefore, I don't think it's reasonable to put any of the blame on Mr T, or any other miscommunication, for the deadline being missed.

Intrinsic said it sent the paperwork to the SIPP provider a couple of days after the initial meeting with Mr T in October 2016. The transfer deadline, to ensure Mr T invested in the quote he was given, was due to expire in mid-December 2016. I think this is a reasonable amount of time to ensure the transfer did take place.

Intrinsic said it submitted the original transfer forms on 20 October 2016 – and sent subsequent emails relating to the transfer up until November 2016. Based on the information I have, I think the first transfer should've been completed no later than 3 November 2016.

I say that because Mr T's second transfer completed within a few days of the forms being submitted. He completed the forms on the second transfer quote he received on 7 April 2017 – and the funds were transferred on 13 April 2017. Therefore, if the forms for the first quote Mr T received had been submitted in the initial stages of Mr T's discussions with D, it's likely that he would've received the funds around one week later.

I also haven't seen any evidence to show Intrinsic tried to expedite the transfer when Mr T made it aware a couple of days before the deadline that the forms still hadn't been received.

Therefore, I think it was Intrinsic's responsibility to find out if the forms had been received. And Mr T also made it aware before the deadline was missed, which he didn't have to do. I think Intrinsic ought to have done more. It didn't – and as a result, Mr T's transfer didn't complete in time.

I recognise Intrinsic didn't end up charging Mr T the fee for the advisor because the original transfer didn't happen. I think it has acted reasonably by doing this.

But I've already explained why I think the transfer would've happened in time if Intrinsic sent the forms when it said it did. And because of this, I've based my findings on what was most likely to have happened if the transfer *did* take place.

Once the transfer eventually did complete, albeit at a lower value, Mr T invested proceeds of the transfer in his SIPP.. So I've considered this in how I think Intrinsic should put things right for Mr T.

By the time Mr T requested a new transfer value, it had dropped by over £30,000. Intrinsic has said because there was a significant drop in transfer values when Mr T requested the new value, it doesn't think Mr P should've gone ahead with this transfer.

But Mr T only requested a new transfer value as the original transfer didn't complete in time. And as I've explained above, I think that's the fault of Intrinsic.

I don't think it was unreasonable of Mr T to have gone ahead with the transfer at the lower rate he was quoted. He had been advised to transfer his funds. And I think by continuing with the transfer he was arguably trying to mitigate any further losses.

Mr T has suggested that a benchmark calculation would be a more appropriate way to evaluate his losses. I appreciate what Mr T is saying here – he feels it'll be a more accurate reflection. But I don't agree. I say this because with Mr T's funds, we do know how they would've been invested, based on how he invested his pension when the transfer did happen. I've thought about what Mr T has said about how his funds are currently invested and that it doesn't reflect his true risk profile. And that he would have invested in higher risk funds if the transfer had happened when it should have.

I understand the argument that Mr T is making. But I think that with the benefit of hindsight it is possible he might have invested in a different way. But I don't think I can safely say that he would have invested in the way he has suggested given that he has invested the proceeds of transfer in a different manner. It's equally possible that he might have had concerns about investment markets in November 2016 and taken a relatively conservative approach to investing his pension funds at that time as well. And I think it's more accurate to use the full value of the funds he did transfer into, rather than using a benchmark in this particular case.

I've also considered what Mr T has said about his intentions with the tax-free cash investment element. He's said he intended to invest the tax-free cash amount if the transfer took place in November 2016 as it should have. However, this part of the money still hasn't been invested. I can't safely say what Mr T definitely would've done – so I've considered my findings based on the balance of probabilities. I've explained above why it's possible Mr T could've taken a conservative approach to invest his pension funds. And I think that also applies to his tax-free cash. I appreciate Mr T made enquiries about how to invest – but I have to take into account that he didn't invest in this way when the money was available to him. Therefore, I can't fairly say Mr T would've definitely invested in this way if the transfer did complete in November 2016. I know Mr T will be disappointed by this, but I can't fairly ask Intrinsic to calculate an investment growth with the benefit of hindsight in Mr T's favour.

Mr T also provided further details on his tax position – and he thinks the redress should be subject to 7.8% tax rate. I've carefully considered what Mr T has said here – but I have to make a decision which is fair and reasonable in the circumstances to both parties. Because of that, I still find a tax rate of 15% to be more appropriate. I know Mr T can't accept a lump sum as settlement from this complaint – but he's confirmed he takes around £24,000 from his SIPP annually. So it appears that this is subject to basic rate tax. I recognise Mr T has provided further details about his future intentions and he feels like he may lose out some money this way, but it seems likely to me from what he's said that he will continue to pay basic rate tax on this income moving forward. And as a result I think that it's appropriate for the portion of the redress that couldn't be used to provide tax free cash to have a deduction of 15 % - which reflects the tax that the redress amount is likely to potentially attract if taken as income or on Mr T's death.

### **how should Intrinsic put things right?**

1. Take the value of the proceeds transferred from Mr T's OPS currently invested in his SIPP at the date of this decision (**Figure 1**);

2. Determine what the value (as at the date of this decision) of the proceeds from Mr T's OPS that *should* have been transferred if the Mr T had received the CETV of £783,884 - and those funds had been invested in the same funds as in (1) had they been invested from 3 November 2016 **Figure 2**).
3. Compare Figure 1 with Figure 2 to determine if Mr T has suffered a loss.
4. Calculate the value of Mr T's tax free cash taken from his SIPP (after the transfer was completed) as at the date of this decision.
5. Determine what the value (as at the date of this decision) of the TFC taken from Mr T's SIPP would have been, if it had been invested in the same deposit account that Mr T has invested it in - had it been invested from 3 November 2016 .

Compare the figure in 4 with the figure in 5 to determine if Mr T has suffered a loss of interest.

6. Mr T should provide Intrinsic with the relevant authorisation (if he hasn't already done so) in order that Intrinsic can obtain the information it needs to carry out the calculations.
7. If this shows that redress is due, then this should be paid to Mr T's SIPP. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.
8. The redress should be paid directly to Mr T as a lump sum after making a deduction of 15%. The payment would otherwise have been used to provide pension benefits, 25% of which would be tax free and the rest would have been taxed according to his likely tax paying status in retirement – presumed to be 20%. And so the 15% deduction adequately reflects this.
9. Add and pay 8% simple per year from date of decision to date of settlement (if compensation is not paid within 28 days of the business being notified of acceptance).

Income tax may be payable on any interest paid. If Intrinsic deducts income tax from the interest it should tell Mr T how much has been taken off. Intrinsic should give Mr T a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

### **my final decision**

My final decision is that I uphold this complaint. Intrinsic Financial Planning Ltd should pay the amount calculated using the methodology as set out above.

Intrinsic Financial Planning Ltd should provide details of its calculation to Mr T in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 15 January 2018.

Hayley West  
**ombudsman**