

The complaint

Mr M says that Dentons Pension Management Limited (Dentons) was responsible for delays in effecting his disinvestment instructions when he decided to switch certain of his Self-invested Personal Pension (SIPP) funds to a Qualifying Recognised Overseas Pension Scheme (QROPS). He says this caused him significant financial detriment.

Mr M is represented by his financial adviser.

What happened

Mr M's Sippchoice Bespoke SIPP comprised a Trustee Investment Account (TIA) and a Fund Administration Bond (FAB). The former was held with St James's Place UK plc (SJP). He decided to switch his pension to a Trireme QROPS. Dentons, was the administrator of Mr M's SIPP.

It's helpful in cases like Mr M's to review the chronology of events, which has been constructed from evidence provided by Dentons, SJP and Mr M.

26 February 2020 – Dentons received the switch request from Trireme.

4 March 2020 - Following receipt of the switch request, Dentons carried out necessary checks and then wrote to SJP (Ireland) for the disinvestment and closure of Mr M's FAB and to SJP (UK) with the same instructions for his TIA.

10 March 2020 - SJP Ireland confirmed receipt of the request.

12 March 2020 – following some chasing by Mr M's financial adviser, Dentons contacted SJP UK. It says it was told to email the paperwork across, which it did the same day.

19 March 2020 - Dentons still hadn't received a response and so sent another email and paperwork.

24 March 2020 – Mr M's adviser called to understand the status of the transaction.

25 March 2020 - Dentons called SJP again as it still hadn't received a response. It says on this telephone call it was told the instructions hadn't been received and another copy should be sent by recorded delivery. I understand the papers were issued that day. It says during this call SJP confirmed it was having administrative problems and that two other requests for different clients had been mis-filed and therefore not actioned.

26 March 2020 – Bank details were provided by Trireme.

30 March 2020 – SJP wrote to Dentons confirming disinvestment of around £97,300 and notifying associated charges of about £3,000.

1 April 2020 – Mr M's funds were received into Mr M's SIPP bank account.

6 April 2020 - Dentons received SJP's letter confirming the switch of funds.

7 April 2020 – Dentons sent the funds to Trireme.

During this process Mr M's adviser raised a complaint against Dentons and SJP about what had happened. In his letter to the former he raised several concerns, which he summarised in the following terms:

"I am writing this letter on 02/04/20 and still Mr. M's funds have not been received by Dentons despite alleged numerous conversations between yourselves, Mr. M and St. James's Place. From the outset, there appears to have been a lack of transparency regarding when and how the instructions to disinvest were sent by Dentons and received by St. James's Place."

"Please explain why a highly important, original document signed in wet ink apparently was not sent by recorded post to St. James's Place, contributing to delay and as a result contributing to my client's financial loss. This would appear to show a clear lack of care and professionalism..."

In responding to Mr M in April 2020, Dentons rejected his complaint. It said:

"I acknowledge that the initial cause of the delay was due to Dentons putting an incorrect SJP Reference Number on one of the documents. However, I consider this to be immaterial in the context of this complaint."

"I note that SJP acknowledged to [our representative] that: ...they were having issues...and that it would have been better to send the document by Recorded Delivery'.

'...staff had placed the Dentons documents (including those for other clients) in the wrong 'pile' and, for this reason, there was a delay of three weeks in actioning them'.

"Additionally, I understand that Mr M has the authority to conduct trades with SJP himself - without the need for the involvement of Dentons. I also believe that...his English adviser, acting as an Appointed Representative of SJP, had similar authority..."

The Investigator didn't uphold Mr M's complaint. She didn't think Dentons had done anything wrong. While she found there had been a delay in the transaction, she considered this was the fault of SJP, which was the subject of a separate but linked case. Mr M disagreed. He thought Dentons had shown a lack of care and diligence.

As both parties couldn't agree with the Investigator's findings and conclusions, Mr M's case has been passed to me to review afresh. I issued my provisional decision in June.

Dentons didn't think I should uphold Mr M's case. It provided more information about its service standards and said it had met these. It said I hadn't taken into account the impact of COVID. And it thought I'd been unfair in how I'd apportioned responsibility between it and SJP and in my proposed redress methodology.

Mr M was content with the outcome I'd arrived at but thought I should provide redress from the same date at which SJP (Ireland) had managed to effect that transaction.

I'll deal with both parties' responses where matters raised are material in this 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.

Where there's conflicting information about the events complained about and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what's most likely to have happened.

I've not provided a detailed response to all the points raised in this case. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've taken into account all submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

I'm upholding Mr M's complaint. I'll explain why.

How does the regulatory framework inform the consideration of Mr M's case?

The first thing I've considered is the extensive regulation around transactions like those performed by Dentons for Mr M. The FCA Handbook contains eleven Principles for businesses, which it says are fundamental obligations firms must adhere to (PRIN 1.1.2 G in the FCA Handbook). These include:

- Principle 2, which requires a firm to conduct its business with due skill, care and diligence.
- Principle 6, which requires a firm to pay due regard to the interests of its customers.
- Principle 7, which requires a firm to pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

So, the Principles are relevant and form part of the regulatory framework that existed at the relevant time. They must always be complied with by regulated firms like Dentons. As such, I need to have regard to them in deciding Mr M's complaint.

I'm also mindful of sector best practice issued by the Transfers and Re-registration Industry Group (TRIG), whose membership included several trade bodies. In 2018 it published *Industry-wide framework for improving transfers and re-registrations*. It noted:

"When moving investments, assets and entitlements between institutions, people have a legitimate right to expect the industry to execute their instructions in a timely and efficient manner. Furthermore, customers' service expectations are increasing due to the relative simplicity of switching in other markets. Slow transfers can cause detriment to customers; and the actions of one party can reduce the efficiency of all parties in the chain."

In this publication TRIG established what it considered to be reasonable timeframes for firms to adhere to for transactions like those being performed for Mr M. While it noted the importance of using electronic means, it also acknowledged that certain elements of certain transactions would continue to require manual processes, including the use of postal services. And that often there were more than two firms involved in the process, which also built more friction into the process.

I don't think either Dentons or SJP can mount a strong argument it was fair and reasonable to Mr M that the switch of his SIPP funds into his QROPS, which was initiated with the receipt of the request from Trireme on 26 February, then took six weeks for Dentons to issue the funds to his new provider.

Both Dentons and SJP have alluded to failures with each other's organisations as the cause of some of the delays Mr M experienced. I've also found some of the answers each firm has supplied to this Service to have been obscure.

I'm mindful this decision concerns the role of Dentons. I'm considering a complaint against SJP separately. But clearly both are linked. So, I set out here my findings and conclusions about each firm, and these will be largely replicated in my parallel decision on Mr M's SJP complaint.

In respect of Dentons, I depart from the Investigators conclusions that it hadn't done anything wrong in this transaction. I think it has a case to answer, including in respect of the following matters.

In responding to Mr M's complaint, Dentons acknowledged that the initial cause of the delay was due to it putting an incorrect reference number on one of the documents. When this Service asked why it believed this issue hadn't been material to the overall situation, it restated the rationale set out in its letter from April 2020:

"... [Mr M] and/or his appointed adviser, were able to deal with SJP without our involvement, and...SJP admitted to long delays and mistakes at their end, and so Dentons' reference number error should be viewed in this light."

I don't find Dentons' arguments persuasive. Firstly, it may or may not have been the case that Mr M and/or his adviser could've effected the transaction without its involvement. But there's evidence on file that it had performed the same role a few days earlier for a smaller disinvestment exercise. And there's no evidence it told Mr M or his adviser it would be better if they dealt with the switch.

Dentons argument about problems at SJP appear to be based on conversations its staff had concerning other clients. Those file notes specifically identify particular issues. But SJP's file note for Mr M doesn't capture such information. It seems Dentons extrapolated problems with other transactions onto what had happened with Mr M.

In its response to my provisional decision, Denton's has now acknowledged in clear terms that the error it made which it acknowledged in its final response caused a delay in the transaction of over a week. It had initially stated this hadn't been material. But clearly, such an issue had a knock on effect through the chain of events to follow.

We asked Dentons to provide information about its usual service standards. It initially told us that it had never published service standards but had received many awards from the FT Adviser for five-star service, voted for by the industry.

Of course, my interest was in the service Mr M received in the specific circumstances of his case. And just because it hasn't published service standards didn't mean it couldn't inform this Service what they were. Dentons has now told us that its terms of business, which it says it communicated to him every year, were that it would act on instructions within seven working days. It says it managed to do this.

Nevertheless, and looking more broadly at the end to end process rather than just the initial instruction, industry best practice suggests the starting point for considering how long most steps should take in a transaction like that Dentons was performing for Mr M was around two days. Accepting an extra day where matters involved manual processes. And the further complication of firms outside of the direct ceding/receiving relationship.

Dentons has raised the effect of COVID-19 on business operations. I think this is a reasonable point to make. While it undoubtedly would've had an impact, I also note it didn't affect all businesses equally and that the majority of transactions continued to be effected in good time.

While I've borne this matter in mind, and is in part why I've rejected Mr M's request to assume the switch should've happened in line with the transaction effected by SJP (Ireland), it's not done enough to demonstrate this was the main reason for the delay he experienced.

I'm not satisfied Dentons did enough to follow-up inactivity at SJP after it had sent its letter of 4 March 2020 requesting the disinvestment of his TIA holdings and for proceeds to be placed in his cash account. It initially failed to follow-up the instruction until 12 March 2020, after the intervention of Mr M's adviser. At this point it should've been on alert, but it's subsequent chasing of SJP didn't happen until 19 March 2020 and finally on 25 March 2020.

Turning to SJP. I agree broadly with the Investigator's findings and conclusions.

SJP says it didn't receive Dentons' instructions of 4 March 2020. I've concluded it's more likely than not it was issued. I've seen a copy of the letter and I note that a similar instruction sent on the same day to SJP's Ireland office in respect of Mr M's FAB was received on 10 March 2020.

SJP says that because the documents Dentons sent were posted first class post it was outside of its control. It says it didn't hear anything from Dentons until its phone call of 25 March 2020. I don't find its arguments persuasive.

In its final response letter to Mr M SJP said:

"...I see from the response that [Dentons] acknowledged the root cause of the initial delay was due to their incorrect SJP Reference Number. Regrettably, Dentons consider this immaterial and have not upheld your complaint on that basis. We do not consider this to be immaterial as your documentation would have been matched to the correct file had this been provided. This would explain the fact that we did not receive their request."

This response from SJP implies it received Dentons original instruction, but that it wasn't matched to the correct file. When this Service sought to clarify this matter, SJP's reply was odd, it said:

"I am unsure where Mr M has got this information of supposedly where we had misplaced the original request that was meant to have been sent in by Dentons on the 4 March 2020. There is no call notes or there is nothing on any letter that we had sent to either Dentons or the Client."

I think SJP is actually maintaining it never received Dentons original instruction of 4 March 2020. But by engaging with the matter raised by Dentons about its incorrect referencing of that letter, it muddies the waters.

SJP told this Service it didn't hear from Dentons until 25 March 2020. It doesn't have any record of the two phone calls Dentons says it made to it on 12 and 19 March 2020. This was when it says it was told to send the documents by email. I've seen copies of the correspondence Dentons sent SJP on these dates, attaching copies of the paperwork it originally sent on 4 March 2020.

There's no evidence that SJP responded to either of Dentons emails. Had it done so, telling Dentons their initial request hadn't been received, it follows the instructions would've been posted again and less of a delay caused to Mr M.

I think the switch of Mr M's SIPP funds to his new QROPS was delayed as a result of the acts and omissions of Dentons and SJP. I find that the way Dentons and SJP worked together to give effect to the transfer of his pension funds was disjointed and inefficient. There were examples of poor communication and handling. This, together with the issues I've set out, led to a delay in the transfer of his funds.

The Investigator concluded that SJP had been responsible for around 6 working days delay. The assessment of how many days Mr M's switch was delayed isn't a matter of science. It's

not possible to say with certainty what the effect of any failing by one firm was on the other, and vice versa. And the issues arising happened at various stages as each firm passed the baton back and forth.

It's a matter of considering what's fair in the circumstances. I think the Investigator has underestimated the delays Mr M experienced. Given that I've found failings with the handling of both firms and on a broader front, I think an assessment of 12 working days delay is fair.

So, if things had gone more smoothly, I think Dentons would've been able to switch fund to his QROPS on 20 March 2020, instead of 7 April 2020. And I've concluded that its more likely than not both firms were equally responsible for what happened.

Putting things right

I'm upholding Mr M's case. So, he needs to be returned to the position he would've been in now - or as close to that as reasonably possible – had it not been for the failures which I hold Dentons Pension Management Limited 50% responsible for.

Dentons and SJP will need to coordinate an assessment of loss. In broad terms, they need to carry out a comparison between current value of the funds transferred, and what the value would've been at the calculation date, if the funds had been transferred on the date they should have been. This is in line with the usual approach of this Service.

So, Dentons Pension Management Limited needs to:

1. Determine the transfer value of Mr M's SIPP TIA pension holdings had they been sold 12 working days earlier.
2. Using the notional value at (1), it will need to apply this to the same mix of investments, on the same date and in the same proportions, to those Mr M actually made following the switch to his QROPS in April 2020.
3. Find the notional value of what Mr M's investments would've been worth at the date of calculation.
4. Compare (3) with the current value of Mr M's equivalent investments in his QROPS (assuming that is still in existence), at the same date of calculation.
5. If there is a loss, Dentons should pay 50% of this sum into Mr M's pension plan, to increase its value by the amount of the compensation. Payment should allow for the effect of charges and any available tax relief. Dentons shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.
6. If Dentons is unable to pay the compensation into Mr M's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid.
7. The notional allowance should be calculated using Mr M's actual or expected marginal rate of tax at his selected retirement age. For example, if he is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. However, if Mr M would've been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation.
8. Provide the details of the calculations to Mr M in a clear, simple format.

Dentons Pension Management Limited should also pay Mr M £150 for the distress and inconvenience caused by its failings in the transaction to switch his SIPP funds.

My final decision

For the reasons I've already set out, I'm upholding Mr M's complaint, and I require Dentons Pension Management Limited to put things right in the way I've directed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 22 August 2022.

Kevin Williamson

Ombudsman