DRN-3685044

The complaint

Mr K complains that Interactive Investor Services Limited (IISL) treated him unfairly, causing him to have to transfer his self-invested personal pension (SIPP) to another provider. And that IISL then caused delays to the transfer process causing him lost investment returns.

What happened

Mr K had a SIPP with Firm A that he'd moved his pension into in 2017. In 2019 Interactive Investor acquired Firm A and in October 2019 Mr K's pension plan was moved to an IISL SIPP.

Mr K's SIPP fund had been held in cash. Mr K explains that, in January 2020, he wanted to start investing his fund. And met with his IFA to discuss that. His IISL SIPP didn't allow direct IFA access, so investments couldn't be made in the way that Mr K wanted.

Mr K started the process of switching to a different SIPP provider (Firm B), via his IFA. The IFA sent a letter of authority and questionnaire to IISL in order to obtain the SIPP scheme information it needed. The IFA called IISL a number of times from early March 2020 to 16 April 2020 to chase the information required.

The pension transfer request was received by Interactive Investor via the Origo Options – an online transfer system – on 4 May 2020. The transfer to the new SIPP, with Firm B, completed on 4 June 2020.

Mr K, via his IFA, complained to Interactive Investor about the delay in responding with the information needed. IISL upheld Mr K's complaint identifying several service failings. Including that it ought to have responded to the request for information sooner. It offered Mr K £100 for the distress and inconvenience that the mistakes caused.

In October 2020 Mr K complained again to IISL. He complained that it misinformed customers about the transition to its SIPP after the take-over of Firm A. And a further complaint about the administrative failures on his policy. He remained unhappy that the pension switch had taken so long and explained that delayed his being able to invest his pension fund. Mr K thought that IISL caused delays meaning that the switch to his chosen SIPP provider took 13 weeks. He thought it should have been completed in a matter of days.

IISL investigated Mr K's complaint. It explained that it had never offered the option of IFA access on Mr K's SIPP and it hadn't informed him that would be the case. IISL didn't agree that it caused an unreasonable delay. It explained that Mr K was always able to make trades within his SIPP, even though the SIPP didn't allow his IFA to do so independently.

Our investigator partially upheld Mr K's complaint. She didn't think that Mr K had been unfairly treated with the transferal of his earlier SIPP to the IISL product after it took over the previous company's business. But thought that IISL caused unreasonable delays that prevented the switch from its SIPP to Firm B.

Neither Mr K or IISL agreed with the investigator's opinion and requested that the case be reviewed by an ombudsman. I looked into what happened and issued a provisional decision to both sides. In it I explained my view as follows:

- I didn't agree that Mr K had been made to transfer because of the way that IISL handled the take over of Mr K's pension policy. And I explained why that meant I wasn't holding IISL responsible for the overall timescale for the transfer that Mr K wanted.

- I was of the opinion that IISL had made mistakes that caused delays which were unreasonable. I referred to failures to respond to reasonable information requests in a timely way. I calculated that IISL contributed to delays that accounted for 15 working days.

- I thought that the delays IISL caused had the likely effect of causing Mr K's entire investment strategy to be implemented 15 working days later than it would have. And proposed a way for IISL to put that right.

Mr K responded to my provisional decision. He disagreed with my findings, ultimately disagreeing with the fundamental point that IISL's actions had made him have to transfer. He also responded to explain that he didn't agree that IISL had acted quickly enough in implementing the transfer once the Origo request had been received. Mr K provided me with the acknowledgement emails that IISL sent in which IISL said that a cash only transfer could take up to three weeks. And Mr K argued that it was unreasonable for it to have taken longer than that without explanation.

In light of that information, I reconsidered my provisional decision. I contacted both parties to explain that I thought that the email meant that the upper limit for the transfer to complete, following the Origo request, was three weeks. Which meant that my provisional finding changed to reflect a further delay that needed to be accounted for. I explained that I considered IISL were most likely responsible for a delay of 22 working days instead. And I amended my proposed means of putting things right to reflect that.

Mr K responded to agree with my amended provisional finding. IISL didn't comment.

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.

Both sides have had the chance to consider my thoughts on this case and respond. In light of the response I have received, I changed my mind from my initial provisional finding. Both sides have had the opportunity to consider that amendment. I think that Mr K's complaint should, in part be upheld. I will explain my reasons as follows.

Causing Mr K to transfer his SIPP

I'll start by addressing what was at the heart of Mr K's complaint. I've considered everything that Mr K had to say on this subject including the detailed response he provided to my initial provisional decision. It's clear to me that he wasn't happy with the SIPP product that he was in with IISL. It wasn't the SIPP product that he chose initially. He ended up with the IISL SIPP as a consequence of IISL taking over the business of the SIPP provider he was with.

I've looked at the correspondence that both sides have shown us from the time. And, for very similar reasons to our investigator, I don't think that IISL treated Mr K unfairly. I understand that Mr K expected that his IFA would be able to access his SIPP and make trades on his behalf. But the IISL SIPP didn't allow that facility. And it is a matter for IISL what terms it offers its SIPP under.

I've seen no evidence that Mr K was ever told or lead to believe that he would be able to use his SIPP in that way. I've noted Mr K's comments regarding the correspondence he received at the time. It was generic correspondence sent to all customers affected by the transfer. It didn't promise IFA access. And it didn't list all features of the SIPP. But it did provide hyperlinks to the IISL SIPP terms and conditions. As well as the opportunity to have any questions addressed.

Mr K was clearly affected by the takeover of the pension business by IISL. As were all customers affected by that takeover process. But a transfer of business like that has to undergo scrutiny from the regulator. I've seen no evidence that IISL acted improperly in the takeover. So I don't think that IISL treated Mr K unfairly in the acquisition. But it did leave Mr K with a choice to make. Which was whether to allow his pension to switch to the IISL option, or to independently seek a pension product that suited his needs. He could have sought financial advice over that decision, but I don't think that IISL were responsible for advising him on whether it's SIPP suited his objectives.

The emails that Mr K received prior to the move to the IISL SIPP gave him notice. And highlighted three important steps. The first was to read the IISL terms and conditions. And the email provided a hyperlink that made that easier. And the subsequent update informed Mr K that copies of those important documents had been added to Mr K's online account with his former provider. I also think that the content of the email made it clear that the terms and conditions of the IISL SIPP may be different.

I don't think it's reasonable to infer that IISL misled Mr K into thinking that his new SIPP would provide exactly the same facilities as the one it was replacing. And provided fair notice and adequate information to enable Mr K to find those things out if specific features were so important to him.

I understand Mr K's frustration at having to transfer at all. But IISL haven't treated him unfairly by its decision not to allow IFA access to its platform in the way he wanted. The information was available for him to determine how the SIPP worked prior to migrating to the IISL SIPP. Had he done so he'd most likely have been able to move to a new SIPP ahead of his decision to start investing his pension fund.

For these reasons, I'm not upholding this part of Mr K's complaint. So it follows that I don't agree that IISL are responsible for the impact of Mr K's pension fund being disinvested from the point at which he decided he wanted his funds invested.

Delayed transfer

I've gone on to look at the service that Mr K received from IISL when he wanted to transfer his SIPP. And here I think that IISL let Mr K down in the service that it provided. IISL has acknowledged that it caused a delay, but I don't think it fairly recognised the impact of that delay. As I'll explain.

I've considered the impact of Mr K's funds being in cash whilst the switch was processed. But I can't say that was IISL's fault. Although it may not have allowed the IFA independent access, it did allow for investments to be made by Mr K on its platform. It may not have been in Mr K's preferred way, but I can't say that he was unable to invest in line with his IFA's advice as soon as he wished.

I therefore think that Mr K could have decided to invest within his IISL SIPP and then transfer in specie – with his funds already invested. I understand that Mr K has said that he wasn't aware of that option. But he was represented by an IFA, who was likely aware of the options available to Mr K. But, Mr K was equally entitled to switch his SIPP first as cash. It may have meant that the transfer happened more quickly. But it meant that Mr K was exposed to the risk of his fund being disinvested for the time it took to make the switch. The consequences of that choice weren't the fault of IISL providing it acted promptly in facilitating the transfer.

I've looked at the service that IISL provided Mr K. And I think that IISL caused unreasonable delays. Mr K provided his IFA with a letter of authority to contact IISL on his behalf and obtain the information needed to be able to instigate a pension switch.

IISL confirmed on the phone to Mr K's IFA that it had the request for information and the letter of authority by 9 March 2020. IISL further acknowledge that it confirmed to the IFA, on 26 March 2020 that it had the information ready to post as of 19 March 2020. And it's agreed that on 26 March 2020 the IFA asked that the information be emailed to him.

So on 26 March 2020, the information required had been ready to send for six days. And only needed to be emailed. By 1 April 2020 it had still not been received. And Mr K's IFA called IISL to chase the response. And according to IISL, the IFA was told that the information would be sent that day.

I'm aware that, at that time firms were adjusting working practices because of restrictions caused by covid 19. And IISL had also informed Mr K's IFA that it had a backlog of requests due to the approaching end of the tax year. I've considered these things and accept that the four working days from being asked to email the information on 26 March 2020 to the IFA calling to chase on 1 April 2020 was not unreasonable. But in agreeing to email it that day, I don't think that it was reasonable not to have done so.

Mr K's IFA called to request the information again on 6, 14,15,16,17 April, before complaining on Mr K's behalf. The information was received on 24 April 2020. Which was 23 days, or 15 working days later than it should have been received. And was, I think, caused directly by the poor service Mr K received from IISL.

I've considered the impact of that delay. It seems that the application to transfer followed very quickly following receipt of the information that Mr K's IFA requested. IISL received a request through Origo on 4 May 2020. IISL couldn't have acted to transfer Mr K's SIPP funds without receiving that. But, if IISL hadn't delayed in response to Mr K's request for information, it's more likely than not, that it would have had the Origo transfer request 15 working days earlier.

Following receipt of the transfer request, the transfer completed by 4 June 2020. Mr K responded to my provisional decision by providing additional evidence in the form of correspondence that he received from IISL following the Origo transfer request.
The email that Mr K received from IISL was dated 5 May 2020 and It updated him that the transfer request had been received. It had a section titled "*how long will it take".* And explained that cash transfers could take up to three weeks. Which not only gave Mr K an expectation, it promised a standard of service. Which IISL failed to deliver.

The transfer completed on 4 June 2020. Which was 22 working days. I accept Mr K's view that it should have only taken three weeks (15 working days). So I conclude that there is a further delay of seven working days that IISL caused. Which should also be factored into the time that Mr K's pension was unnecessarily out of the market.

In summary, I am upholding Mr K's complaint in part. IISL effectively caused a total delay of 22 working days to the transfer. If it wasn't for that, I think it's more likely than not that the whole transfer process would have been completed around 22 working days sooner.

Putting things right

My aim is to try to put Mr K, as close as possible, into the position he might have been but for IISL's mistake. Which means, determining what would most likely have happened if the money had been available 22 working days earlier than it was.

Mr K has been unable to provide me with any documented financial advice he received regarding his intended investments. He explains that he would have invested the entire fund in March 2020 when share prices were depressed following the stock market downturn at that time. But I haven't identified that failings by IISL account for that amount of delay. In March, when Mr K says he wanted to invest, IISL had yet to receive the Origo transfer request. Mr K's pension was still in the SIPP with IISL, where Mr K was still able to make investments. Either of his choosing, or under the advisement of his IFA. So I don't think that I can fairly say that IISL's mistake caused Mr K to be unable to invest at the market's lowest point.

The investments selected were identical on each of the three investment tranches made a month apart. Whilst market conditions would have been different 22 working days earlier, so too were the conditions over the two month period when investments were placed. And no alteration was made to the investment choices. So, for the purpose of determining whether Mr K suffered a loss, it seems more likely than not that Mr K's fund would have been invested in the same way, that is in three equal tranches each a month apart, only 22 working days sooner.

For these reasons, I think that Mr K would most likely have invested in the following way if IISL hadn't caused the delay.

- I think that the initial tranche of investments would have been invested in the same way only at the prices available 22 working days sooner. So on Friday 8 May 2020.
- The second tranche of investments would have been made 22 working days prior to 10 July 2020. So, on Wednesday 10 June 2020.
- The third tranche of investments would have been made 22 working days prior to 10 August 2020. So, on Thursday 9 July 2020.

Any loss Mr K has suffered should be determined as follows:

- Obtain the notional value of the pension on 10 August 2020, on the basis that it had been invested in the same funds on the earlier dates that I've set out above. And subtracting the actual value of the pension on 10 August 2020 from this notional value. If the answer is negative, there's a gain and no redress is payable. If it's positive that loss is the notional investment loss on the pension at 10 August 2020.
- Determine the overall investment returns on Mr K's SIPP, from 10 August to the date that IISL is notified of Mr K's acceptance of my final decision, allowing for the effect of any contributions or withdrawals.

- Apply these overall investment returns to the notional investment loss to determine the overall compensation due to Mr K.

If IISL is unable to calculate the notional value based on the actual investments made, or is unable to obtain the actual SIPP fund returns (from 10 August 2020 until the date it's notified of acceptance of my final decision) from the SIPP provider or Mr K, IISL will need to determine fair returns using this benchmark: FTSE UK Private Investors Income Total Return Index. This index is made up of a range of indices with different asset classes, mainly UK equities and government bonds. I consider that it's a fair measure for Mr K, who was prepared to take some risk to get a higher return.

The compensation amount should if possible be paid into Mr K's pension plan. 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.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr K as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid. Mr K had already taken his tax free cash from this pension, so the entire remaining fund would be subject to income tax at his marginal rate. Presumed to be 20%.

If payment of compensation is not made within 28 days of IISL receiving Mr K's acceptance of my final decision, interest must be added to the compensation at the rate of 8% per year simple from the date of my final decision to the date of payment.

Income tax may be payable on any interest paid. If IISL deducts income tax from the interest, it should tell Mr K how much has been taken off. IISL should give Mr K a tax deduction certificate in respect of interest if he asks for one, so he can reclaim the tax on interest from HMRC if appropriate.

IISL have already paid Mr K £100 to compensate him for the distress and inconvenience caused by the delays that it identified. Which are essentially the same delays I've considered here. I've considered the impact of these delays on Mr K, and whilst I can see that he has been caused upset by the transfer, I think that's mostly because of his view that he should never have been in the position of having to transfer at all. Which I don't agree was IISL's fault. For the impact of the delays that I've upheld this complaint for, I think that the compensation already paid reflects the distress and inconvenience caused. Any financial loss can be put right, and I'm not aware that it has had a bearing on Mr K's retirement plans. So I don't intend to ask IISL to pay a further award for distress and inconvenience.

My final decision

For the above reasons, I’m upholding Mr K’s complaint. Interactive Investor Services Limited must compensate Mr K in the manner set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr K to accept or reject my decision before 13 December 2022.

Gary Lane
Ombudsman