

The complaint

Mr R says St James's Place UK plc ('SJP') is responsible for delaying the cash transfer of his pension – from SJP to Fidelity – and for the financial losses he incurred because of the delay.

SJP accepts partial responsibility for the delay. It says it has assessed financial loss on this basis but has been informed by Fidelity that there is no such loss, and it says it has offered Mr R £200 to reflect its apology for the delay in communicating this outcome to him.

Mr R maintains that SJP is wholly responsible for the delay, that compensation for financial loss should be on this basis and that, in the alternative and based on the partial responsibility it concedes, SJP's financial loss assessment is flawed (as it has been presented) and uses the wrong benchmark – the assessment that has been presented should show a financial loss, assessment upon the correct benchmark also shows a financial loss and he should be compensated for such loss.

What happened

The transfer process began on 26 November 2020, when SJP received the transfer instruction through Origo Options (the electronic pensions/assets transfer platform). The process, at SJP's end, was concluded on 11 February 2021 when the pension's liquidated proceeds were released to Fidelity. Between these dates were, mainly, the following:

- On 30 November and 17 December 2020 SJP wrote to Mr R with requests for identification documentation required as part of the process. These letters were sent only to his office. The pandemic related lockdown was in place during this period, so Mr R was not using his office. However, the office address was the only correspondence address on record for his SJP pension.
- Mr R eventually learnt about the request and sent in the required documentation on 8 January 2021. SJP denies responsibility for the delay up to his response on this date. It says it sent the requests to the correspondence he lodged on record for the pension, that he did not update this to an alternative address at the time and that it was bound, by its data protection responsibility, to use the address on record for such correspondence. Mr R disagrees. He questions the call for the identification verification that SJP sought, given that he had held an account with SJP since the 1990s and such verification had been previously exhausted; and he argues that the lockdown defined state of affairs at the time ought to have prompted SJP to foresee that he would not be using the office and to notify him about its request in another way.
- On 11 January 2021 SJP processed its receipt of the documentation and emailed Mr R to say they were unacceptable as they were copies, not originals. He replied on the same day to confirm that they were indeed originals. SJP then acknowledged that he was correct, and it used the date of 11 January 2021 for pricing of the pension's liquidation – it has explained that it used the pricing on the next working day (11 January 2021) after receipt of the documentation it requested (on 8 January 2021).

- Thereafter, the liquidation proceeds were not released to Fidelity until 11 February 2021. SJP accepts fault in this respect. It says an internal system defect (that had to be addressed manually) caused a delay, otherwise, after processing of the documentation on 11 January 2021 and based on its standard service levels, the transfer would have been released on 18 January 2021.
- Mr R complained and SJP responded on 26 February 2021. It accepted responsibility only for the delay between 18 January 2021 and 11 February 2021. It promised to calculate whether (or not) Mr R incurred a financial loss as a result of this, and based on the delay caused to the post transfer reinvestments made in the Fidelity pension.
- SJP did not share the calculation outcome until 15 October 2021. It apologised for the delay in doing that and offered Mr R £200. It also confirmed that information it obtained from Fidelity – which it shared (in the form of a table with asset numbers, a “shares to compensate” column and a “cash to compensate” column) – showed there had been no financial loss caused by the delay.

One of our investigators looked into the case, considered that it should be upheld but concluded that it should be upheld only on the basis of the delay caused by SJP between 18 January 2021 and 12 February 2021. She considered that SJP had followed the approach towards redress that this service would expect; that the approach appears to have shown no financial loss to redress; that it correctly used pricing on 11 January 2020 for liquidation of the pension’s holdings; that it did not cause the delay prior to this date because its identification verification requests were reasonable and they were reasonably sent to the address (for Mr R) on record; that she notes Mr R’s claim that he would have reinvested differently on 4 December 2020 (after the transfer should have been completed, but for that initial delay) – which she did not uphold; and that SJP’s offer of £200 is a reasonable amount to compensate for its delay in confirming the loss assessment outcome.

Mr R disputes the investigator’s view and he retains his core submissions on the case (as summarised above). He asked for an ombudsman’s decision and highlighted, in the main and in addition, the following submissions for the ombudsman’s attention:

- The issues to determine are SJP’s liability for the *first period of delay* (between 4 December 2020 and 11 January 2021); its liability for the *second period of delay* (between 11 January and 12 February 2021 (when Fidelity received the released funds)); full redress, due from SJP, if it is found responsible for the first period of delay; or partial redress, due from SJP, only for the second period of delay; accurate calculation of redress (in either case); interest, from 12 February 2021 onwards, on the compensation due to him; and additional compensation for the fact that any such compensation – which, but for SJP’s wrongdoing, would have been value within the pension – cannot be paid into the pension due a fixed protection element within it, and will therefore be outside the tax efficient pension wrapper.
- We should find that SJP is responsible for the first period of delay, for the reasons he has set out – he had been their client since the 1990s; his identification verification had been established in that history; this calls into question the verification it sought in response to the transfer request; he had been communicating with SJP by email and telephone at the time and informed them he was working from home because his office was closed due to lockdown; therefore it ought reasonably to have been aware that sending its request to his office would not reach him in good time or at all.
- In the alternative, we must find SJP responsible for the second period of delay, given

that it has conceded and explained its fault for that.

- Redress, in terms of SJP's responsibility for the first period of delay, should be complete. But for that delay, the transfer would have concluded in time for him to reinvest in the Fidelity pension on 4 December 2020. His loss is therefore from that date onwards. How, after the delays, he reinvested in the Fidelity pension in February 2021 (most of which was done between 15 and 19 February, as the former was the first trading day after Fidelity's receipt of the transfer on 12 February) is not a fair indication of how he would have reinvested in December 2020. His investment strategy was forced to change during this period because of the delay and because of market events. Without the delay, he would have pursued his 'preferred' strategy on 4 December 2020 [which he set out in his submissions, alongside evidence of his past investing approach which, he says, stands in support of his submissions]. Complete redress, calculated up to 12 February 2021, should be due to him on this basis, with interest (at the rate of 8% per year) thereafter and to date.
- If redress is awarded only for SJP's responsibility for the second period of delay the liquidation value of his SJP pension at the time and the liquidation proceeds actually transferred should first be accurately addressed – as the latter appears to have been less than the former, and an amount similar to the Early Withdrawal Charge that SJP agreed to waive appears to have been deducted. Another preliminary matter is the need to correct SJP's omission, from the loss assessment table it presented, of some of the reinvestments made in the Fidelity pension between 15 and 19 February 2021 – this creates a reason for us to ask SJP to disclose information about its loss assessment and to review such information. To aid the correction, he has submitted an excel document showing the reinvestments that were made and how, overall, they would have been cheaper if executed earlier – hence a basis for his loss and a basis to find that SJP's table misrepresents the loss assessment. In addition, and for the wider investment strategy reasons he set out, it is also reasonable to find that the reinvestments he made in February 2021 would not have been the same as those he would have made in January 2021, had the transfer been released earlier. He would have invested differently, as he has explained. Therefore, redress should be calculated to reflect the loss he incurred from being unable to reinvest in that way on 8 or 11 January 2021 and calculated up to 12 February 2021, plus interest from 12 February 2021 to date.
- His claim for the loss of a tax efficient pension wrapper for the compensation that is due to him is estimated at £10,000.

The matter was referred to an ombudsman.

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.

I agree with Mr R's summary of the key issues in his complaint, and I address them below.

First Period of Delay

In this respect, I have considered the period between initiation of the transfer process on 26 November 2020 and SJP's receipt and processing of the identification documents on 8 and 11 January 2021. I note SJP's error in initially rejecting the documents it received and its subsequent acknowledgment that they were indeed the required originals. However, this need not be addressed further because it caused no detriment to the process, the liquidation

value of the pension was set to prices on 11 January 2021.

The first period of delay began soon after Monday 30 November 2020, the date on which SJP wrote to Mr R with the identification verification request. Before then, the transfer was initiated on Thursday 26 November 2020, so SJP's request two working days after was not unduly delayed. As summarised above, it repeated its request on 17 December 2020. It did so because it had not received a response from him. Mr R responded on 8 January 2021, the documents he submitted were processed on 11 January 2021 and the same date was used for the liquidation valuation.

Mr R's argument is that either no time should have been taken up by the exercise or less time would have been consumed by it if SJP's request was communicated differently. He says, or suggests, the verification exercise was unnecessary; and, or in the alternative, he says SJP ought not to have sent its request to his office, instead it ought reasonably to have sent it by email. On balance, I disagree in both respects.

I have not seen evidence that SJP did not need the identification verification that it sought from Mr R. Its letter provided perfectly reasonable grounds for its request – anti-money laundering laws requiring such verification prior to payment from the pension and the absence of a current verification for Mr R. Even if past verification had happened in the history between the parties, on balance, it was not unreasonable to ask for *current* verification in the absence of one. I have not seen evidence that current verification was already place at the time of SJP's request. Overall, I consider that the verification exercise was reasonable and necessary. Furthermore, events show that the exercise was essentially resolved within a day to two days when the identification documentation was eventually received, so I do not consider that, of itself, it played a role in delaying the transfer.

What caused a delay was Mr R's response to the request. He says this should be viewed differently and that the cause should not be seen as the time it took for him to become aware of SJP's request (after which he promptly addressed it) but it should be seen as SJP's error in sending the requests to the wrong place, given particular and relevant circumstances at the time. I understand the circumstances he has referred to, but the fact remains that the correspondence address on record for the pension was his office address. SJP was not wrong to use that address for correspondence about his pension.

SJP's request was of a formal nature, it arose from its anti-money laundering responsibility. It is not unreasonable to expect that such formal communication will be directed to the correspondence address on record for a pension account. Could it have been coupled or followed by informal notice or an informal reminder, from SJP to Mr R, by email or telephone? Possibly. However, on balance, I am not persuaded that SJP was obliged to follow-up in such ways. There appears to be no evidence of a prior update to the correspondence address on record or of SJP previously being told to redirect communications in any way. It was prompted to send a reminder on 17 December 2020 but it did that to the same address. I do not consider it was wrong to do that and, despite the circumstances Mr R has cited, I also do not consider it reasonable to expect SJP to have taken it upon itself to redirect such a formal communication without instruction to do so.

Overall, on balance and for the reasons given above, I acknowledge that there was a delay in the transfer process during the period between 30 November 2020 and 8/11 January 2021 but I am satisfied that SJP was not responsible for it. It follows that I also do not uphold Mr R's claim for redress based on this period of delay (the first period of delay), so I will not be addressing this aspect of his submissions.

Second Period of Delay

There is no meaningful purpose in addressing liability for this in detail. SJP accepts that it is responsible for the defect in its internal systems that delayed the release of the transfer to Fidelity after 11 January 2021. Available evidence supports this. Its liability for this period of delay is therefore settled.

In terms of defining the period itself, on balance, I am persuaded by SJP's estimation that, but for the delay, the transfer release would have concluded in five working days after its processing of the identification verification on 11 January 2021 – so, by 18 January 2021. Bearing in mind the release process at SJP's end and time for the funds to be cleared and received by Fidelity, this estimation is not unreasonable. Due to the delay, the release happened on 11 February 2021 and was received by Fidelity on 12 February 2021, so the period of delay is between 18 January and 12 February 2021.

For the purpose of resolving Mr R's complaint, the key date is 18 January 2021, on which the transfer would probably have been received by Fidelity. Based on his actions in February 2021 he would probably have begun to reinvest in the Fidelity pension from then (18 January 2021). This proposition has already been presented (and accepted) by SJP and it was also reflected in the investigator's view, so my finding in this respect is not new to the complaint. I understand why Mr R has described the second period of delay as beginning on 11 January 2021. If he means the second phase of the transfer process, after the identification verification exercise, began on this date, he is correct – and, of course, that phase experienced a delay. However, in terms of the 'delay' itself and for the reasons given above, the second period of delay began on 18 January 2021.

Redress Issues

I address this only in the context of SJP's liability to compensate Mr R for financial loss arising directly from the second period of delay – which I hereafter refer to as 'the delay'. In pension/asset transfer cases like his, where assets are liquidated at one end of the transfer and the proceeds are to be reinvestment at the other, the potential for financial loss can arise at both ends. There is a need to consider whether (or not) the relevant delay (by the firm) caused a loss in the liquidation value that was achieved and/or whether it caused a loss in terms of the reinvestments that were intended and/or subsequently made.

In Mr R's case, the delay began (on 18 January 2021) after the liquidation valuation set on 11 January 2021, so there is no need to address compensation for a loss of liquidation value. No such loss was caused by the delay. The matter that remains is that of reinvestment loss. Nevertheless, and as I set out below and in response to Mr R's concerns about inaccuracies in the transfer value, it is important that the accurate liquidation value of the SJP pension as of 11 January 2021 was the basis for the transfer to Fidelity and is the basis for calculating redress for any reinvestment loss.

Without the delay Mr R's reinvestments in the Fidelity pension would have happened earlier. Both parties agree on this, as do I. Mr R says, without the delay, he would have invested differently in January 2021; that, aside from this argument, taking SJP's loss assessment as it is the assessment is wrong; it does not capture all the reinvestments made in the Fidelity pension and the net loss that resulted from the delay in making those reinvests (that is, on a net basis, they could have been made at lower prices in January 2021 than the prices at which they were made in February 2021).

His first argument is essentially that what would have been his *preferred* investments as of January 2021 is what should be used as the benchmark for calculating redress. Overall and on balance, I am not persuaded by it. I have considered the evidence he shared with us and I understand the inferences that can be drawn from them. However, my determination rests on the balance of probabilities, so I need to consider which investments he *probably* would

have made on/from 18 January 2021 – the preferred investments or the investments he actually made around a month later in mid-February 2021? The balance of available evidence is that he would have probably made the latter. I note the conviction with which he says he would have made the former and I do not say or suggest that I know more about his intentions at the time than he does, but I can make a finding on the balance of available evidence and that is what I have done for this issue.

The investments Mr R made in the Fidelity pension from 15 February 2021 onwards are undisputed, and undisputable. They were made directly after the transfer that features in this complaint. They were made around a month later than they probably would have been made if the delay had not happened. Investment plans and decisions can change within a month, and the same could reasonably be said about such plans and decisions changing over weeks, days or even hours. Such changes also depend on the approach being applied – for example, a long-term investment approach versus a day trading approach – and, especially, on the objective.

Mr R repeatedly confirms that he invested for growth, with references to evidence in support of this. Part of his approach was to follow relevant price trends. He says he departed slightly from the all-growth objective in February 2021 because the trends he was monitoring were probably close to ending and because some unusual price opportunities presented themselves – so he maintained the growth objective for some of the investments and, for the others, invested outside of the objective.

My first observation is that Mr R's pre-planned objective/approach remained in place for some of the February 2021 investments, so this lends support to the finding that they can be used to determine what he would have invested in on/from 18 January 2021.

My second observation is that he was prepared to compromise part of his pre-planned objective/approach if he considered that an opportunity justified doing so. To be clear, this is in no way a criticism, he was fully entitled to make pragmatic decisions as an informed investor. However, the implication that arises is that something similar could also have happened around 18 January 2021. In other words, if his pre-planned objective/approach was unyielding there is a better argument that it, alone, would probably have influenced his investments around 18 January 2021. However, the same argument is impaired and, in my view, defeated in the face of evidence that his approach was not unyielding. He could probably have done, around 18 January 2021, something similar to what he did in February 2021 if an opportunity outside his pre-planned approach presented itself.

Overall, on balance and for the above reasons, I find that the basis for considering what the Fidelity pension would have been invested in, on/from 18 January 2021, is what it was invested in from 15 February 2021 onwards, because those were probably the investments that would have been made on/from the earlier date. Mr R could argue that the same opportunity was not present around 18 January 2021. If that is the case, I retain the view – for the same reasons above – that the investments in February are still the best available and fair basis for a redress benchmark.

The above core conclusion is also not new to the complaint. It was used by SJP in the loss assessment and it is essentially the same reached by the investigator.

The next redress issue to address is the loss assessment. SJP has used the correct approach and basis, but Mr R's points about inaccuracies cannot reasonably be ignored. Indeed, they must be addressed because the assessment must produce definitive and accurate outcomes on whether (or not) he is due compensation and, if so, on the amount of that compensation. For these reasons, I have made provisions in the next section below.

The other redress issues to address are Mr R's references to interest and to compensation for the inability to pay any compensation into his tax efficient pension wrapper. For the sake of completeness, I agree with and endorse the offer of £200 that has been made to him for SJP's delay in communicating the loss assessment outcome. It is a fair amount that, I consider, adequately reflects SJP's service failure in terms of the delay, its length and, most importantly, its effect on Mr R (that is, being deprived knowledge, during the delay, of an outcome he had been promised and was entitled to).

SJP said the aim of its loss assessment was/is to calculate what Mr R's "... *value would presently be with* [Fidelity], *had they received* [his] *funds on 18 January 2021*". This matches the approach that this service would expect in a case like Mr R's. It also means the assessment runs to the present and, effectively, to the point the case is resolved. It runs based on how his Fidelity pension would have performed (up to such point) had the transferred funds been received on 18 January 2021. As a result, there is no need to apply 8% interest (per year) from 12 February 2021 to date. There is no evidence that the pension would have had such performance (that is, at the rate of 8% per year) during this period if the transferred funds had been received on 18 January 2021. Instead, the correct approach – as I set out below – is to assess how, using the investments in the Fidelity pension from February 2021 onwards as the benchmark, the pension would have performed to date had the same investments been made from 18 January 2021 onwards; comparing that with how the pension has actually performed to date; and compensating Mr R for any resulting negative difference.

This service has experience of cases in which compensation cannot be paid into a complainant's pension. We have an approach in this respect and, given that Mr R's is one such case (for the reasons he has explained), I refer to that approach in the section below. I have not seen cause in this case to depart from the approach.

Putting things right

The orders I give below do not alter the redress basis offered to Mr R by SJP, and they do not alter the approach it used in its offer. I have already addressed these points above. However, I give the orders because redress is yet to be concluded, there appear to have been inaccuracies within SJP's loss assessment considerations and there are unresolved concerns about those inaccuracies. Instead of addressing the submissions that have been made in these respects, I consider it meaningful to simply set out what the redress must fairly and reasonably look like in practice and the requirement for accuracy throughout its calculation.

The aim is to put Mr R as close as possible to the position he would now be in if the delay had not happened.

I order SJP to provide Mr R with evidence that his SJP pension's liquidation value as of 11 January 2021 is exactly the same as the basis for the cash transfer value it released to Fidelity on 11 February 2021; to provide him with a calculation – in a clear and simple format – in this respect; and, if a deficit in the values used is found to exist, to add that deficit to the calculation of the *fair value* that I refer to below.

I order SJP to calculate how *all* the Fidelity pension's investments (beginning from 15 February 2021) have performed to date, reflecting any investment switches in this period. I order Mr R to provide SJP with all information and documentation it reasonably needs, and does not already have, in order to conduct this calculation. The result of this calculation is the 'actual value'.

Performance of *all* the investments made in the Fidelity pension from 15 February 2021 to date (reflecting any investment switches made in this period) is, collectively, 'the benchmark' for the calculation of redress in this case.

I order SJP to calculate how the Fidelity pension (plus the value of any transfer deficit, as addressed above) would have performed from 18 January 2021 to date, if it had been invested (from 18 January 2021 to date) in a fashion identical to the benchmark. The result of this calculation is the 'fair value'.

If the actual value is greater than the fair value, no compensation is due to Mr R. If the fair value is greater than the actual value, the difference is the total compensation that SJP must pay to Mr R.

I order SJP to pay any resulting compensation to Mr R directly because he has explained that it cannot be paid into his Fidelity pension as that would conflict with the existing fixed protection within it. Had it been possible to pay it into the pension, it would have provided a taxable income, so the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid. The notional allowance should be calculated using his actual or expected marginal rate of tax at his selected retirement age (for example, if he is or is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax and if he would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation). This aims to treat the compensation, as close as possible, as if it had been paid into the pension.

I order SJP to provide Mr R with a calculation of the compensation in a clear and simple format.

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £150,000, £160,000, £350,000, £355,000 or £375,000 (depending on when the complaint event occurred and when the complaint was referred to us) plus any interest that I consider appropriate. If fair compensation exceeds the compensation limit the respondent firm may be asked to pay the balance. Payment of such balance is not part of my determination or award. It is not binding on the respondent firm and it is unlikely that a complainant can accept my decision and go to court to ask for such balance. A complainant may therefore want to consider getting independent legal advice in this respect before deciding whether to accept a final decision. In Mr R's case, the complaint event occurred after 1 April 2019 (it happened between 2020 and 2021) and the complaint was referred to us after 1 April 2020, so the applicable compensation limit would be £355,000.

I order SJP to pay Mr R £200 for the trouble and inconvenience caused to him by its delay in communicating (to him) the outcome of the loss assessment.

My final decision

For the reasons given above, I uphold Mr R's complaint. I order St James's Place UK plc to conduct the calculation, and any resulting payment (to Mr R), of redress as I have set out above. If any resulting compensation is not paid to him within 28 days of St James's Place UK plc being informed of his acceptance of this decision, St James's Place UK plc must pay him interest on the total compensation amount at the rate of 8% simple per year from the date of this decision to the date of settlement – this is to compensate him for any such delay by St James's Place UK plc in making any resulting compensation payment.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 29 December 2022.

Roy Kuku
Ombudsman