

The complaint

Mr P complains that Interactive Investor Services Limited (IISL) caused a delay in making a tax-free cash payment from his self-invested personal pension (SIPP) from November 2020 to January 2021, and this prevented him from investing the tax-free cash outside his SIPP.

What happened

Mr P's IISL SIPP received a same day transfer from Scottish Widows on 22 September 2020. The letter from Scottish Widows of that date gave IISL its HMRC registration details and confirmed all benefits were uncrystallised.

Mr P reinvested the proceeds of the transfer into the markets in a series of tranches spanning 23 September to 21 October, but left £140,000 of the transferred funds in cash within his SIPP so that they could be drawn down as a tax-free lump sum. On 13 November 2020 he requested that sum from IISL, and further clarified his instructions at its request on 14 November (he had not previously specified how much of the fund he wanted to crystallise).

The lump sum wasn't paid out until 8 January 2021, after Mr P had been informed on 24 December 2020 that the payment would be made within five working days. He has variously said that it had been his intention to leave £40,000 (advised to IISL on 11 December 2020) or £20,000 (advised to IISL on 7 January 2021) in cash for living expenses - and to reinvest the remainder back onto the non-pension part of the IISL platform, split between himself and his wife in ISAs and general investment accounts.

Mr P later said that he and his wife had, in fact, reinvested £131,072 back on to the platform - but about £46,353 of this came from cash ISA transfers (in other words, Mr and Mrs P 'swapped' this amount that they would otherwise have retained in cash ISAs with the money Mr P received from the tax-free lump sum). He wanted IISL to give him the missed growth on the £131,072 he reinvested, on account of its delay.

In its final response to the complaint, IISL explained that whilst Mr P had requested the payment on 13 November 2020, the transfer from his former provider hadn't actually been completed at that point - and was not finalised until 26 November 2020 when it was able to confirm that no benefits had been previously crystallised. It said it had warned him *'The drawdown process is a 4-step process which we advise can take up to a month or 10 working days per stage, to conclude.'* (I should of course note here that up to 40 working days in total would actually be up to eight weeks.)

IISL admitted to a delay between 26 November and 11 December 2020 but was unwilling to base compensation on 'hypothetical trading', noting also that it had been Mr P's decision to leave those funds in cash at the point of the request. It also said that Mr P's payment *'was instructed and collected within [five working days of 24 December 2020], with payment being made shortly after.'* So, it only agreed to pay Mr P £100 compensation.

Mr P considered this was insufficient - particularly considering that IISL had told him that it wrote back to Scottish Widows saying its transfer confirmation was incomplete, Scottish

Widows told Mr P that it had not heard from IISL and then in any event it 'magically' agreed to move forward with the transfer in the absence of Scottish Widows' reply. He also said:

'I was left in a very precarious position having been made redundant earlier in the year but with no access to pension cash that I had relied on to live on. You cannot imagine the stress caused by having no transparency around the fate of such a large part of my life savings.'

He adds that the process was disjointed and he spent at least three hours on the phone to IISL trying to hurry things along. To his surprise since making this transfer he has done the same thing for his wife which only took five to ten days.

Mr P considered IISL bore some responsibility for not ensuring the transfer confirmation from Scottish Widows was complete. IISL confirmed to our investigator that it did receive a transfer confirmation letter from Scottish Widows (the letter which said all funds were uncrystallised), but 'this did not confirm if any tax-free cash was available'. So it asked its administrator to chase up Scottish Widows to obtain this information (and also informed Mr P of this on 13 November) but after getting no reply, it made a discretionary decision to proceed on 26 November after '[Mr P] provided IISL with the required tax-free information'. It added:

'Unless there are any issues, we expect secure messages to be responded to and any documents to be uploaded to our pension administrator, Barnett Waddingham (BW), within 5 working days upon receipt, and up to 7 working days for BW to complete all necessary checks and respond to us.'

IISL confirmed it only provided the initial form Mr P completed to BW on 10 December 2020 despite agreeing with Mr P it could go ahead on 26 November. Following that the following events occurred:

- IISL sent Mr P a 'Pre-retirement Pack' to complete on 11 December 2020
- He returned this the same day by secure message
- IISL passed this to BW on 16 December 2020
- IISL sent Mr P the 'Retirement Pack' on 22 December 2020
- He returned this on 23 December 2020 by secure message along with the final forms (Benefit Confirmation and Lifetime Allowance Declaration)
- IISL provided these to BW on 24 December 2020
- The drawdown payment then left Mr P's SIPP on 8 January 2021

IISL said that it only had evidence of two of the trades Mr P had made, so it was willing to do a loss calculation in respect of those two stocks only. When Mr P provided evidence of the rest of the trades (some of which were in his wife's name for tax purposes), IISL then objected that Mr P hadn't demonstrated that the funds were specifically drawn from the tax-free cash released. In any event, it said the trades were made sporadically suggesting Mr P made time-sensitive decisions to go into particular stocks. And it questioned why Mr P was investing in his wife's name.

My previous provisional decision: 29 September 2022

What delays did IISL cause?

I don't agree with the investigator that the only delays caused were after 26 October 2020. There's a copy of Scottish Widows' transfer confirmation letter dated 22 September 2020 on file which clearly states that the transfer comes from an HMRC registered personal pension and Mr P's funds were uncrystallised. However, IISL says this was insufficient because:

- The letter did not confirm if any tax-free cash was available.
- A transfer confirmation letter should give details of crystallised/uncrystallised funds, any previous tax free cash payments and how much of the lifetime allowance had been used up.
- It was Mr P providing this information on 26 November 2020 that allowed IISL to proceed.

This explanation simply doesn't stand up to scrutiny. IISL must realise that there can't be any crystallised funds in a transfer that is described as uncrystallised. And that, by definition, means Mr P hadn't used up any of his lifetime allowance or any tax-free cash entitlement on these funds.

I appreciate that some legacy arrangements allowed different amounts of tax-free cash to the standard 25%, but that would not apply to a personal pension. So I can't envisage any situation where on receiving this letter, IISL – or its administrator – wouldn't reasonably be able to proceed on the basis that Mr P would be entitled to 25% of the transferred sum as tax-free cash. And I can't see that Mr P told IISL anything on 26 November 2020 that it didn't already know when it then replied to him as follows:

'Following on from your phone call I have updated our administrator regarding your funds being uncrystallised and they will now proceed with that information.'

In my view, that means when Mr P requested drawdown on 13 November 2020 (and then clarified what he was seeking in terms of tax free cash and uncrystallised funds on 14 November), IISL should have processed the request straight away.

Next, I should comment on why there are so many stages in IISL's process – as I know Mr P is unhappy with this. Following the introduction of pension freedoms in 2015, the Financial Conduct Authority introduced guidance called 'retirement risk warnings' – to make sure businesses made customers aware of the pitfalls in accessing their pension pot. Under those regulations businesses are not allowed to proceed through the process until they have understood what the client is seeking to do and then provided tailored risk warnings to their objectives. Where this is done by an exchange of correspondence this means one form needs to be completed, further documentation then generated based on the responses on the first form, and so on. So I make no criticism of the number of steps involved in IISL's process, however I consider it took IISL (and/or its administrator) too long to complete them in this case.

In my view a five working day turnaround time on receipt of paperwork is a fairly consistent standard in the industry and I take this into account as representing good industry practice. Particularly here, where under current FCA regulations accessing a pension pot now requires a number of separate steps - and inordinate delays can significantly string out the process. The Association of British Insurers' Code of Conduct on retirement choices going back as far as April 2012, for example, says that payments should be made 'promptly' – and I think a longer timescale than this for individual steps in the process would call the achievement of that aim into question.

That being the starting point, it is then primarily a matter for IISL and not Mr P to contend with if IISL's administration is carried out by a third party. Mr P has no ability to set the terms between IISL and BW for processing times but is entitled to expect these to be reasonable. IISL is still accountable to Mr P for the end result, and presumably the intention of using the third party is that the administration will be performed efficiently.

In my view it would be reasonable to expect the processing of Mr P's paperwork at each

stage in the process, once it was in the right place, to be performed within five working days. I accept that as IISL uses a secure portal and allows documents to be uploaded electronically, this saves on postal times – and as a SIPP is a more complex arrangement than a personal pension this is more likely to involve the transfer of paperwork between departments. I'm prepared to allow a further two working days for IISL to route the correspondence to BW – but I think five is excessive and would not be treating Mr P fairly, particularly as part of a multi-stage process.

Allowing a total of seven working days at each point in the process from when IISL clarified Mr P's drawdown instruction on 14 November 2021, gives the following timescale:

25 November 2020: IISL sends Mr P his 'Pre-retirement Pack' to complete

26 November 2020: Mr returns this by secure message (I have allowed one day for Mr P to return it, as he managed to do it on the same day on 11 December and we know he had enough time to contact IISL to chase for the missing form on 26 November)

7 December 2020: IISL sends Mr P his 'Retirement Pack'

8 December 2020: Again by the next day, Mr P returns this by secure message along with the final forms (Benefit Confirmation and Lifetime Allowance Declaration).

17 December 2020: The tax-free cash payment has been processed and leaves Mr P's SIPP

A longer delay has therefore in my view been caused between 17 December 2020 and 8 January 2021, when I'm told the tax-free cash of £140,000 actually left Mr P's SIPP.

How should IISL compensate for these delays?

Much has been said about whether it is appropriate to use actual named funds to model how Mr P would have invested if he'd received the proceeds sooner. In my view it wouldn't be appropriate to use the same funds Mr P actually invested in later on (on behalf of himself and his wife). I've seen enough evidence in the submissions made to know that Mr P was monitoring markets closely (indeed he began complaining during the period of delay because he could see markets were going up). And so I think he's likely to have made decisions on specific funds based on the state of the market at the time.

There is sufficient doubt in my view as to whether those decisions would have been exactly the same on (or soon after) 17 December 2020, to mean that using an index to model the loss caused by IISL's delay is more appropriate. But there are two further things I need to consider: whether the index should be used for all the £140,000, and what index is appropriate.

Should an index be used for all the £140,000?

At the time Mr P started his complaint he told IISL that he intended to retain £40,000 of the awaited tax-free cash for living expenses. That doesn't give me the impression he was going to spend it all straight away, but it would be used gradually, over a period of many months. It's consistent with Mr P having lost his job, as he explained to this service.

In the event Mr P actually left only £8,928 uninvested. But this was part of an overall pattern of reinvestment which saw £46,353 of cash ISAs being transferred onto the IISL platform and moved into equities, allowing more of the pension tax-free cash to be retained in their place. Mr P makes clear he was doing this in order to swap cash for cash. In other words, I think it's fair to say that the £46,353 became part of his short to medium term living expenses.

At the point Mr P put IISL on notice that it was causing him a delay, he didn't specifically say that its delays were preventing him from transferring the ISAs – in fact I can't see how IISL's

delays would have prevented those transfers from happening. And I don't think it's fair and reasonable to hold IISL responsible for Mr P having £130,000 left out of the market when he told it on 11 December 2020 that only £100,000 was going back into the market. I can't fairly say that any further losses were foreseeable given what Mr P told IISL at the time.

But on the wider points IISL is making, I don't agree that it was all down to Mr P's decision to leave funds in cash awaiting the tax-free cash withdrawal. His decision not to invest £140,000 of the transfer within his SIPP, when he did invest the remainder, was clearly made in the expectation that the tax-free cash would be paid quicker than it was. And I think that was a reasonable expectation.

I also don't agree that sums Mr P invested on behalf of his wife, or the precise timing of those sums, makes a difference to the overall outcome here. Mr P had recently lost his job. I'm sufficiently satisfied from what he's told this service that he was viewing his and Mrs P's finances jointly, and was making arrangements to achieve the *overall* outcome of leaving some surplus cash to meet living expenses whilst reinvesting the remainder. There are obviously advantages to making some investments in a spouse's name if they pay less tax and this shouldn't come as a surprise to IISL.

Broadly, then, I think it is fair to take Mr P's intentions as articulated to IISL on 11 December 2020 of reinvesting £100,000 – not £140,000 – as indicative of how his loss should be calculated. There is no need for any calculation on the other £40,000 in my view – as it would likely have sat on deposit for that short period of time; Mr P was not deprived of the use of it as I'm not persuaded he would have spent it straight away; and interest rates are very low and would have provided negligible interest.

I also note that the investigator has already proposed £300 compensation for the distress and inconvenience caused to Mr P which I consider is fair and reasonable in the circumstances.

What index should be used for the £100,000?

I've looked at the funds Mr P bought in his and Mrs P's ISAs and general investment accounts as indicative of the risk level he would likely have taken with any reinvestment after 17 December 2020. As Mr and Mrs P have actually made these investments I don't regard the overall risk level they pose, in general terms, as hypothetical. Those funds were:

Fund	% split	Current composition
Baillie Gifford Positive Change	31%	<i>Global growth stocks</i>
Rathbone Multi Asset Enh Growth	31%	<i>Global equities, very small fixed interest</i>
Liontrust Sustainable Fut Managed	15%	<i>Global equities, very small fixed interest</i>
Rathbone Ethical Bond	15%	<i>Fixed interest (corporate bonds)</i>
Baillie Gifford Managed	8%	<i>Global equities, around 20% fixed int</i>

Overall, I think this would produce about an 80% equity vs 20% bond ratio, so I don't agree with Mr P that the FTSE Private Investors Growth Total Return index isn't broadly representative of this. I think that index is the most suited to the types of investment he would likely have made on receiving £100,000 of the tax-free cash sooner.

Responses to my provisional decision

In summary, Mr P said:

- He has always made some investments in his wife's name.
- The reason they moved to IISL was so that they could manage the drawing down of

- sums themselves, which they expected it to be possible to do.
- They had planned for a long time to reinvest £120,000 of the £140,000 withdrawal: £40,000 into current year ISAs, £40,000 shortly thereafter into the next year's ISAs, and another £40,000 into equities for later switching into ISAs the following year.
- It is something they intend to repeat with further withdrawals in future.
- In the event, they reinvested a little more than they intended. He doesn't understand why he mentioned £100,000 in his message of 11 December 2020, and believes he rushed into commenting under stress without checking his spreadsheets.
- It was wrong to take this isolated comment out of the context of their original plan.
- They had maintained sufficient cash reserves, so the cash withdrawal from the SIPP was more about planning ahead.
- He agrees with the use of the FTSE Private Investors Growth Total Return index and the period for loss assessment.

IISL made no further comments other than asking for the 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.

As IISL hasn't commented further, I've first considered Mr P's comments. I've already accepted that making the investments in his wife's name is something he was entitled to do, and it doesn't appear IISL is disputing that further either.

The rest of Mr P's comments are to show that it had always been his long term plan to reinvest £120,000 – not £100,000 of the proceeds of the drawdown. I don't see there is a need to doubt that Mr and Mrs P intended to do this, but I've explained in my provisional decision that what he *told* IISL at the time is relevant - insofar as he was giving them advance notice that he would hold them liable for keeping a certain amount of those funds out of the market. That's because the potential losses could be significant if, for instance, the market rose during the period of the delay. And he was giving IISL an opportunity to mitigate this problem (albeit that I can't see that IISL took that opportunity.)

Mr P thought he might have mistakenly mentioned £100,000 to IISL in one of the phone calls, so I've listened to all the calls IISL has provided again. In fact it wasn't in a phone call that Mr P mentioned this: he doesn't distinguish between amounts he was going to spend and save in any of the recordings IISL has provided between him and its call handlers. It was actually in a secure message which Mr P sent IISL on 11 December 2020, where he said:

'Further info - I have kept 140K in cash ready for the drawdown as explained. Only 40K of this was to place in cash - the balance accounts. I have reviewed the performance of my current investment in funds in the SIPP over the past month and calculated an (so far) in not being invested and was/is languishing in cash in the SIPP still...'

As such, I'm satisfied it remains fair and reasonable to hold IISL responsible for the consequences of being unable to reinvest £100,000 and to use £40,000 for general expenditure. As I explained in my provisional decision (and Mr P has confirmed in response), he did maintain other funds in cash during the period of delay. I appreciate the sheer frustration of this episode, which is why I've made an award for his distress and inconvenience. But in terms of the cost of delay on the £40,000, I think the lost interest in say his current account would have been negligible.

Putting things right

I've already set out proposals to put things right in my provisional decision. IISL hasn't commented, but Mr P has agreed with the index used and dates. I'm not persuaded by Mr P's arguments to increase the amount (£100,000) on which the calculation in line with this index applies, for the reasons I've given above. I've reviewed the rest of my findings and remain of the view that the method I set out below will provide fair and reasonable compensation in the circumstances of this case.

I consider fair compensation should be calculated by increasing the amount of £100,000 in line with the FTSE Private Investors Growth Total Return index from 17 December 2020 to 8 January 2021. The amount by which the £100,000 has been increased in this calculation represents Mr P's loss.

This loss should then be brought up to date by applying the change in value of the same benchmark from 8 January 2021 to the date of this Final Decision. £300 should then be added to the updated loss to reflect the distress and inconvenience caused to Mr P overall by the delayed payment (including the remaining £40,000 which was delayed).

Why is this remedy suitable?

I have chosen this method of compensation because:

- Based on the information Mr P has provided about his circumstances at the time he was looking for investments that provided him mainly with growth and was willing to accept a higher degree of investment risk.
- The FTSE UK Private Investors Growth total return index is a mix of diversified indices representing different asset classes, mainly UK and global equities with a relatively small component in bonds. It would be a fair measure for someone who was prepared to take greater risk to get a higher return.
- The mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison, given what I've explained above about how Mr P tended to invest his funds.

My final decision

I uphold Mr P's complaint and require Interactive Investor Services Limited to calculate and pay him compensation as set out in the 'fair compensation' section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 30 November 2022.

Gideon Moore
Ombudsman