

The complaint

Mr M complains that St. James's Place Wealth Management Plc (SJP) poorly processed the transfer of his previous self-invested personal pension (SIPP) to an SJP retirement account. He explains that this caused his pension fund to be disinvested for an unreasonable amount of time causing him to suffer investment losses.

What happened

In late 2018 Mr M received financial advice from SJP regarding the transfer of an existing SIPP to an SJP SIPP.

On 25 April 2019 SJP emailed Mr M's previous SIPP provider, Firm A, to request key information about that SIPP. SJP explain that it sent further requests to Firm A on 1 May 2019 and 15 May 2019 asking for that information.

In the meantime, SJP sent a request to Firm A, on 29 April 2019, to disinvest all funds held in Mr M's SIPP. The majority of funds held in Mr M's SIPP were already SJP investments. And on 7 May 2019 SJP received an instruction from Firm A to disinvest Mr M's holdings in the SJP funds. SJP completed the sale of Mr M's existing investments and sent the cash to the Firm A SIPP by BACS on 13 May 2019.

On 28 May 2019 SJP provided Mr M with a recommendation report. It explained that it was confirming its recommendation of November 2018. And outlined details of the recommended switch.

On 4 June 2019 SJP sent a transfer request, via the Origo platform, to Firm A.

Firm A then sent a query to SJP for information. Which delayed Firm A completing the Origo transfer request. Firm A later acknowledged that it was already in possession of the information it sought from SJP. So Firm A accepted responsibility for the delay in processing the Origo transfer request. It accepted that it could have transferred the funds for investment by 11 June 2019, but for its mistake. And offered Mr M compensation for that delay which was accepted.

Mr M's transfer actually went ahead on 1 July 2019 with the funds being re-invested on 2 July 2019.

Mr M complained to SJP about the delays it caused and the impact of that. SJP looked into Mr M's complaint and issued two responses. The first acknowledged that it could have done more to facilitate the transfer and thought that it believed that the transfer could have gone ahead by 17 June 2019. And calculated that Mr M would have had investment growth of £11,591 if his fund had been re-invested at the earlier date. Its subsequent response offered to compensate Mr M for the SIPP fee that had become due with Firm A, which could have been avoided if the transfer had occurred sooner.

Our investigator thought that Mr M's complaint should be upheld. But disagreed with the way that SJP proposed putting things right. SJP didn't agree with the outcome reached by our

investigator. But did still agree that it should compensate Mr M to ensure that he was not disadvantaged by the time the transfer had taken. It made a further offer. but that wasn't accepted by Mr M.

I issued a provisional decision in which I explained that I was upholding Mr M's complaint and what I thought SJP should do to put things right. SJP acknowledged and accepted what I'd said in that provisional decision.

Mr M responded to let me know that he disagreed with what I'd said. In essence he didn't agree with my suggestion that SJP should only compensate for the losses up until the point that Firm A had accepted responsibility. Mr M thought that SJP should compensate him from the point that the reinvestment of his pension should have happened until 2 July 2019, less the amount of compensation he's already received from Firm A.

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've considered the argument that Mr M has raised and have fully considered the circumstances again. But my final decision is the same as I reached in my provisional decision. I'm upholding Mr M's complaint because I've identified a failing on the part of SJP that I'll explain in what follows. Having identified something that I think SJP have done wrong, I have to consider the impact of that mistake on Mr M. It isn't fair or reasonable to hold SJP to account for the impact of any mistake made by Firm A.

SJP were responsible for advising Mr M to transfer from Firm A. And I need to consider whether its actions were fair and reasonable. Mr M explains that he understood that the transfer would cause his pension fund to be disinvested for a short period to facilitate the cash transfer. Which I think was fair. But I've considered whether the way that the transfer was handled caused Mr M's funds to be out of the market for an unnecessary amount of time. And, as I'll explain, I think that they were.

SJP instructed Firm A to disinvest all the funds in the SIPP on 29 April 2019. I've asked SJP about this. It's explained that this request was made in the expectation that the recommendation and transfer request would follow soon after. In effect, I think that the adviser was assuming that the recommendation would ultimately be to transfer and that Mr M would accept it. But the adviser wasn't in possession of key information from Firm A. And couldn't know how long it might take to receive that.

This means that SJP ought to have known that it was not yet in a position to recommend or to request the transfer when it requested that the funds were disinvested. It had requested information from Firm A on 25 April 2019. Which was only two working days earlier. Without a response, SJP simply wasn't in a position to finalise the advice to Mr M. And Mr M hadn't yet received a written recommendation from SJP. So couldn't reasonably have decided to proceed.

It appears that SJP didn't receive the answers it sought from Firm A until 20 May 2019. I understand that SJP weren't responsible for the time it took Firm A to provide that information. The transfer recommendation appears to have been submitted for SJP's internal compliance approval on 20 May 2019. Which meant that the written recommendation that SJP needed to provide to Mr M wasn't generated until 28 May 2019.

Notwithstanding that I don't think that SJP are to blame for the fact that its written recommendation took longer to provide than it intended, that delay wouldn't have impacted

Mr M if his funds weren't disinvested so long in advance. I don't accept that the disinvestment was to preserve the value ahead of the transfer. The funds were, after all, immediately re-invested with SJP following the switch.

I have to conclude that SJP simply requested the disinvestment on Mr M's SIPP earlier than it should have. It recommended this course of action to Mr M in preparation for a pension switch that had not yet been completely agreed. I don't think this was reasonable. The consequence of SJP's actions here, was that Mr M's SIPP was disinvested too far in advance of the request to transfer. Which means that SJP are responsible for any losses that Mr M's fund might have suffered by being out of the market during that time.

Putting things right

I can't know exactly what would have happened had things run more smoothly for this transfer. But I think that this is a fair way to put Mr M as close to the position he would have been in if SJP hadn't advised him to disinvest his pension so early.

Firm A didn't receive the Origo transfer request until 4 June 2019. Firm A accepted responsibility for the fact that the transfer hadn't completed by 11 June 2019. And Mr M has accepted Firm A's offer of compensation for the delay from 11 June 2019 until the transfer completion of 1 July 2019. If it was Firm A's fault that the transfer didn't happen by 11 June 2019 then it isn't reasonable for me to ask SJP to compensate Mr M for that same loss again in this case. But SJP should compensate Mr M for any investment loss he may have suffered for the unreasonable time his pension was 'out of the market' before SJP was able to request the transfer for him.

To determine if Mr M suffered a loss, SJP should calculate the notional investment returns that his fund would have received between from the point at which the funds were disinvested (recorded on his SIPP statement with Firm A) until 11 June 2019 (the point beyond which Firm A have taken responsibility for any losses) if they'd remained invested in the Firm A SIPP.

If this calculation shows that Mr M's fund ought to have experienced fund growth in that period, then that would be the loss in his fund's value on 11 June 2019. It means that the transferred amount would have been higher. This loss would also have been subject to fund growth. I think that the fairest way to allow for this is for SJP to increase that loss by the notional gains on that loss had it then been invested in line with its recommended investment strategy, from 11 June until the date of my final decision. This will represent Mr M's total loss to the date of my final decision, and is the compensation that SJP should pay Mr M.

If SJP is unable to calculate a notional loss as suggested above, it should instead use this benchmark: for half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds.

Why is this benchmark suitable?

I've chosen this method of calculating potential investment returns because:

- Mr M wanted capital growth with a small risk to his capital.
- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.
- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.

- I consider that Mr M's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr M into that position. It does not mean that Mr M would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr M could have obtained from investments suited to his objective and risk attitude.

The compensation amount should if possible be paid into Mr M'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 M as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid – at Mr M's marginal rate – assumed to be 20%.

At the time that SJP gave Mr M advice, Mr M's fund had been partially crystallised. SJP's recommendation on 28 May 2019 indicated that around 60% was crystallised. So 60% of the compensation can be reduced by 20% to allow for the effect of tax. 40% of Mr M's fund was uncrystallised. Meaning 25% of that could have been taken as a tax free lump sum. So the other 40% of the compensation can be reduced by 15% to allow for the effect of tax on that part.

I've considered the inconvenience caused by the initial issue and the ongoing trouble in putting things right. Mr M has been taking pension through a drawdown. And, whilst this issue will have impacted the underlying value of his residual pension for a number of years, it doesn't appear that it will have impacted his income drawdown. Which was being managed to ensure that he remained within the basic rate tax threshold. So he's suffered no impact in his available income, nor was he likely concerned that it would in the medium term either. SJP have acknowledged that Mr M was caused inconvenience and agreed that a figure of £500 in compensation for that was fair. And I agree that is fair and, in addition to compensating for any loss, SJP should pay £500 to reflect the distress and inconvenience Mr M was caused.

I also think it will be fair to ask SJP to pay the compensation within 60 days of the date on which we tell it Mr M accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

My final decision

For the reasons I've given, I uphold Mr M's complaint. St. James's Place Wealth Management Plc must compensate Mr M in the manner that I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 16 February 2023.

Gary Lane
Ombudsman