

The complaint

Mr A complains that St James's Place UK plc ("SJP") has failed to administer his pension savings in an effective manner. Specifically he has complained about three aspects of the administration of his pension savings. He complains that;

- SJP failed to pay a drawdown from his pension savings in a reasonable time.
- SJP failed to complete the transfer of his pension investments into a money market fund before trading in one of those investments was suspended.
- SJP failed to transfer his pension savings to a new provider in a reasonable period of time.

What happened

I issued a provisional decision on this complaint in January 2023. In that decision I explained why I thought some of the complaint should be upheld and what SJP needed to do in order to put things right. Both parties have received a copy of the provisional decision but, for completeness and so those findings form part of this decision, I include some extracts from it below. In my decision I said;

One of our investigators has explained to Mr A that his complaint about the drawdown payment has been made too late. Mr A hasn't disagreed with that assessment, so I won't be considering that part of his complaint any further. In this decision I will only be looking at the other two aspects of Mr A's complaint.

Mr A held pension savings with SJP. He received advice and support on those pension savings from an appointed representative of SJP Wealth (a separate regulated firm). This complaint does not deal with any aspects of the advice Mr A received from his financial advisor. It only deals with the administration of his pension savings by SJP.

In March 2020 Mr A says he became concerned about a potential downturn in the value of his pension investments in response to the start of the coronavirus pandemic. He instructed SJP, via his financial advisor, to transfer all his pension investments into SJP's money market fund.

SJP says it received that request on 17 March, before its processing cut off. But it failed to confirm the instruction for a couple of days. Part of Mr A's pension savings were held in SJP's Property Fund. Trading in that fund was suspended on 18 March. So, although SJP received Mr A's instruction before the relevant trading cut off, it was unable to sell his investments in the property fund for some time.

SJP accepted that it had been in error in not processing Mr A's instruction on receipt. So, once the suspension of the property fund had been lifted, it agreed to backdate the sale of Mr A's holdings in that fund to 18 March. And it gave him a £100 gift voucher as an apology for its error.

In October 2020 Mr A decided to transfer his pension savings to another provider. SJP received a request for information on Mr A's pension savings from the new provider. But its response failed to provide all the information that had been requested. It didn't send all the required information until 19 November. At that point the new provider sent SJP a request for the transfer of the pension savings via the automated Origo Options system.

SJP failed to identify that the transfer included both crystallised and uncrystallised funds. It wasn't able to process the transfer of the crystallised funds using the automated system. So a couple of weeks later it asked the new provider for further paperwork to support the transfer request. So ultimately, SJP accepts that both the transfers of the crystallised and uncrystallised funds were delayed by its error – the crystallised funds delay being around a month longer than the uncrystallised funds.

When Mr A complained about the delay SJP paid him £250 for the inconvenience he'd been caused. And it said that it would pay further compensation to reflect any investment returns that had been lost due to the delay.

It seems to me that both parties are now generally in agreement with what happened, and more importantly what should have happened, in the administration of Mr A's pension savings during 2020. So in this decision I only need to decide what SJP needs to do in order to put things right. But it is possible that, when correcting the error relating to the property fund, any compensation paid will increase the value of Mr A's pension savings that were transferred to the new provider. So the correct sequencing of the compensation calculations is something that SJP should take into account when calculating the overall compensation due to Mr A.

Error relating to property fund

SJP accepts that it should have transferred Mr A's pension savings from the property fund before it was suspended in March 2020. So I think it is right that, when dealing in the fund restarted, the sale of Mr A's holdings was backdated to the relevant price before the suspension. So I don't think Mr A has lost out as a result of any changes in the price of the property fund during the period of the suspension.

But Mr A was unable to access that part of his pension savings during the period of the suspension. I am satisfied that, if nothing had gone wrong, the part of Mr A's pension savings that was held in the property fund would have remained invested along with his remaining pension savings in SJP's money market fund. So SJP should account to Mr A for any investment returns he might have received from the money market fund during the period of the suspension of the property fund. Should there have been any positive returns during that period, Mr A has lost out, and SJP should increase that part of Mr A's pension savings to what they would have been worth had they been invested in the money market fund from the time the transfer should have happened.

There is no doubt that, during a period of market instability, Mr A would have been concerned to see a part of his pension savings held in a suspended property fund rather than the relatively less risky money market fund that he had instructed. So I do think a further payment should be made to reflect that distress. SJP has already paid Mr A £100 in this regard, but I think an additional payment of £100 is warranted.

Delays to the transfer of Mr A's pensions savings to the new provider.

SJP has agreed that, considering its normal processing timelines, it would have been reasonable for Mr A's pension savings to be transferred to the new provider and reinvested by 16 November 2020. The actual transfers, of the uncrystallised and crystallised funds, didn't complete until 1 December 2020 and 13 January 2021 respectively.

So I think it is right that SJP should compensate Mr A for any investment returns he missed out on due to the delays to the transfers. Mr A has explained that his agreement with his new financial advisor was that his pension savings would be reinvested as soon as they were transferred. And I can see that is exactly what happened. I have no reason to doubt that Mr A would have taken the same investment approach had his pension savings been transferred sooner.

The investment approach that Mr A took was based on the use of a model portfolio. So it is relatively straightforward to estimate the performance that Mr A's pension investments would have achieved by looking at the performance of the model portfolio. There is no need to consider the individual investments that Mr A actually made since they would mirror those in the model portfolio. And taking that approach also ensures that any changes Mr A made to his pension investments over the following years are fairly represented in the calculation of the loss he made.

SJP accepted our investigators findings, based on the redress methodology that I've set out above, on 21 March 2022. At that point Mr A's new advisor provided details of the growth that would have been seen on Mr A's pension savings if they had been transferred on time, compared with their actual value. Those calculations, that have been shared with SJP, showed that Mr A's total investment loss, on both the crystallised and uncrystallised amounts, equalled £26,400.62.

But I think it reasonable that loss estimate should be recalculated as at the date of any final decision along these lines. And due to market conditions since the original calculation was performed, I think it is possible that a revised calculation might show that the loss has been reduced.

SJP accepted our investigator's findings in March 2022. At that time it could have paid the compensation that was due to Mr A. And as I explained earlier that compensation would have needed to be paid directly to Mr A since making the payment into his pension would have affected the protection that he held against changes to the lifetime allowance. But I'm not persuaded that, although the funds would have been held outside his pension savings, I have any reasonable grounds to conclude they would have been invested differently. So I'm currently persuaded that it would be fair to assume that the compensation that was calculated in March, would have experienced a similar change in value to that seen by Mr A's other pension investments.

So I am currently minded that the compensation due to Mr A should reasonably be recalculated as at the date of any final decision that I issue. So that means it should be based on the investment returns to that date, and so a further assessment will be required from Mr A's investment manager.

Although the resolution of this compensation has been protracted, I am not currently persuaded that I should add any further compensatory interest for the period that Mr A has been without the payment. I don't consider that SJP had any legal obligation to pay that money to him at that time – that obligation only arises once Mr A accepts any final decision that I issue.

But I do consider that a further payment should be made in respect of the distress and inconvenience that Mr A has been caused by the delay to his pension transfer and the resolution of his complaint. As I said earlier SJP has already paid Mr A £250 in that regard. I think a further payment of £100 would be fair here.

I invited both parties to provide us with any further comments or evidence in response to my provisional decision. Mr A has said that he accepts my provisional decision, but asked for some further clarification on how the redress will be calculated - I will deal with those queries later in this decision. SJP also accepted my findings, but said that it didn't agree with how I'd asked it to compensate Mr A. For ease, I'm reproducing below a part of what SJP has said. But I want to reassure SJP that I have read, and carefully considered, the entirety of its response. SJP said;

We have to try and put a client into as closely as possible to the financial position they would have been in had things turned out differently. In circumstances like this one, we would typically compare the latest overall valuation of the units added by the actual transfer against latest overall valuation of the units that would have been added by an assumed earlier transfer if this was invested on the same basis. This confirms the investment performance achieved by each transfer and we provide redress for the difference if the assumed value is higher.

We obtain the detail needed to allow for the assessment by either asking the receiving scheme confirm the investment details or for the client for the contract note they received when the investment was confirmed to them. If either are not available, we will look at alternative measurements such as the model portfolio investment performance data you have used or benchmarking.

This approach allows us to capture the ongoing impact of an investment delay is one that is aligned with the approach we have been asked to use by FOS when assessing potential losses. This is different from the one used in the proposed resolution as the main element essentially only captures the investment performance achieved while the transfer was held out of investment.

This element captures the investment growth achieved from assumed investment date to the actual investment date. Had this growth been held in in the pension, the potential for this to be realised is only available if it was withdrawn to access this as a pension benefits. 25% of this would be taken as a tax-free cash sum from the uncrystallised transfer growth and the remaining balance from this and the full crystallised transfer growth would be taken as a taxable income. The tax deduction from the taxable income is calculated using the client's marginal rate of income tax at retirement and it is normally reasonable to assume they would be basic rate tax payer at this time.

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 in my provisional decision, in deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mr A and by SJP. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

I've thought carefully about what SJP has said about the form that the redress payable to Mr A should take – the basis of which I have set out above. Having done so I cannot agree that SJP's proposals form a fair method of compensating Mr A as I will now go on to explain.

Mr A's pension transfer was delayed by SJP. During that time his pension savings were effectively held in cash so didn't benefit from the investment returns that his proposed investments would have generated. It is clear that the missed investment returns Mr A experienced during the delay are the responsibility of SJP.

But Mr A's losses didn't end at that point. His pension savings would have continued to have been invested after that time, so any growth that had been achieved would have gained further compounded returns from future investment performance. So it is right that the assessment of Mr A's lost investment returns continues to the date of this final decision.

The approach that SJP has suggested would imply that, once the transfer had been completed, Mr A withdrew the additional growth from his pension. That is unlikely in my opinion, and not supported by his actual actions. So leaving his funds invested would mean they wouldn't be subject to any income tax on withdrawal (nor would they benefit from the tax-free status of a pension commencement lump sum).

I also don't think it appropriate to simply take a snapshot of Mr A's investments at the time of transfer. Mr A has appointed an investment manager to look after his pension savings. One of the obvious potential advantages of that approach is that his pension investments can be altered from time to time to reflect changing sentiment in the markets and ensure his investments are spread across different asset classes to match his attitude to risk at any time. That has been achieved through the use of a model portfolio. It is the performance of that model portfolio that best represents the investment performance of Mr A's pension savings from the date the transfer should have happened, to the date of this final decision.

The calculation of the performance of Mr A's pension investments will need to be undertaken as at the date of this final decision. I understand that Mr A has already liaised with his investment manager, and it stands ready to provide the necessary information to SJP. However, taking account of Mr A's concerns about the time it has taken so far for his complaint to be resolved I think it reasonable to set a four-week deadline for the payment of any compensation to him. If that time is exceeded then I will direct SJP to pay additional compensatory interest to Mr A.

Putting things right

Error relating to property fund

SJP should assess whether the part of Mr A's pension savings that remained suspended within the property fund would have received any investment returns had it been immediately placed into the money market fund.

If any investment returns would have arisen, Mr A has lost out. SJP should calculate the amount of that loss up to the date that the pension funds should have been transferred to the new provider. SJP should also take account of any higher amount when assessing the loss suffered by Mr A due to the delayed transfer (see below).

Delays to the transfer of Mr A's pensions savings to the new provider.

SJP should determine, using the information to be provided by Mr A's investment manager, the notional value of Mr A's current pension, as at the date of this final decision, had his pension funds been transferred and reinvested in that new plan on 16 November 2020 (including any returns in the money market fund as set out above). If the calculated amount is higher than the actual value of Mr A's current pension plan, as at the date of this final decision, then Mr A has suffered a loss

Overall treatment of compensation

Normally I would have proposed the compensation to be paid into Mr A's pension plan. However doing so would conflict with his existing protection.

So SJP should pay the total compensation direct to Mr A. But had it been possible to pay into his pension plan, it would have provided a taxable income. Therefore the total amount should be reduced to notionally allow for any income tax that would otherwise have been paid.

The notional allowance should be calculated using Mr A's expected marginal rate of tax during retirement. Given how Mr A expects to utilise those pension savings it's reasonable to assume that he is likely to be a basic rate taxpayer at that time, so the reduction would equal 20%. However, as Mr A would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

I should be clear however that the above deduction is only notional. It will not result in SJP making any payment of deducted tax to HMRC. And so it will not be possible for Mr A to reclaim any of the tax that has been notionally deducted.

Should SJP fail to pay the compensation to Mr A within four weeks of receipt of Mr A's acceptance of this final decision, and the performance data from his financial advisor, it should add simple interest at a rate of 8% per annum to the compensation from the date of my final decision to the date of settlement. HM Revenue & Customs requires SJP to take off tax from this interest. SJP must give Mr A a certificate showing how much tax it's taken off if he asks for one

In addition SJP should pay a further £200 to Mr A in respect of the distress and inconvenience caused to him by both errors.

My final decision

My final decision, for the reasons given above and in my provisional decision, is that I uphold Mr A's complaint and direct St James's Place UK plc to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 23 March 2023.

Paul Reilly
Ombudsman