

The complaint

Mrs A complains that St James's Place UK plc ("SJP") has failed to administer her pension savings in an effective manner. Specifically she has complained about two aspects of the administration of her pension savings. She complains that;

- SJP failed to complete the transfer of her pension investments into a money market fund before trading in one of those investments was suspended.
- SJP failed to transfer her 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 Mrs A that her complaint about the transfer of her pension savings into the money market fund has been made too late. Mrs A hasn't disagreed with that assessment, so I won't be considering that part of her complaint any further. In this decision I will only be looking at the transfer of Mrs A's pension savings to the new provider.

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

In October 2020 Mrs A decided to transfer her pension savings to another provider. SJP received a request for information on Mrs A's pension savings from the new provider. But its initial response failed to provide all the information that had been requested. But SJP says that each stage of the transfer was ultimately completed in line with its normal expectations. The transfer completed on 26 November 2020.

It seems to me that both parties are now generally in agreement with what happened, and more importantly what should have happened, when Mrs A asked to transfer her pension savings to the new provider. So in this decision I only need to decide what SJP needs to do in order to put things right.

SJP has agreed that, considering its normal processing timelines, it would have been reasonable for Mrs A's pension savings to be transferred to the new provider and reinvested by 16 November 2020. The actual transfer of her funds didn't complete until 26 November.

So I think it is right that SJP should compensate Mrs A for any investment returns she missed out on due to the delays to the transfer. Mrs A has explained that her agreement with her new financial advisor was that her 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 Mrs A would have taken the same investment approach had her pension savings been transferred sooner.

The investment approach that Mrs A took was based on the use of a model portfolio. So it is relatively straightforward to estimate the performance that Mrs 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 Mrs A actually made since they would mirror those in the model portfolio. And taking that approach also ensures that any changes Mrs A made to her pension investments over the following years are fairly represented in the calculation of the loss she made.

SJP accepted our investigators findings, based on the redress methodology that I've set out above, on 21 March 2022. At that point Mrs A's new advisor provided details of the growth that would have been seen on Mrs 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 Mrs A's total investment loss at that time equalled £1,481.70.

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. But, in the specific circumstances of this complaint, I think that would lead to a fair outcome for Mrs A. The pension plan will have simply performed as it always would.

SJP accepted our investigator's findings in March 2022. At that time it should have paid the compensation that was due to Mrs A. But, that compensation would most likely have been added to Mrs A's existing pension investments – I've not seen any reason such as conflicts with any existing protection or allowance that would make that unreasonable. So I'm currently persuaded that it would be fair to assume that the compensation that was due in March, would have experienced a similar change in value to that seen by Mrs A's other pension investments.

So I am currently minded that the compensation due to Mrs 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 Mrs A's investment manager.

I also consider that a further payment should be made in respect of the distress and inconvenience that Mrs A has been caused by the delay to her pension transfer.

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.

Mrs A has been assisted in making her complaint by her husband (Mr A), who has also made a similar complaint about his pension savings. Mr A has provided us with a single response to my provisional decisions on both complaints. But I am satisfied that his comments do relate to Mrs A's circumstances, as well as his own. In this decision, for ease, I will refer to all communications as if they were with, and from, Mrs A herself.

Mrs A 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 Mrs A. Its response to Mrs A's complaint was largely the same as that for Mr A. So I am sure that both parties will understand why my responses to SJP's comments on both complaints are similar.

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 Mrs 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 Mrs 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 Mrs A as I will now go on to explain.

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

But Mrs A's losses didn't end at that point. Her 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 Mrs 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, Mrs A withdrew the additional growth from her pension. That is unlikely in my opinion, and not supported by her actual actions. So leaving her 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 Mrs A's investments at the time of transfer. Mrs A has appointed an investment manager to look after her pension savings. One of the obvious potential advantages of that approach is that her pension investments can be altered from time to time to reflect changing sentiment in the markets and ensure her investments are spread across different asset classes to match her 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 Mrs 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 Mrs A's pension investments will need to be undertaken as at the date of this final decision. I understand that Mrs A has already liaised with her investment manager, and it stands ready to provide the necessary information to SJP. However, taking account of Mrs A's concerns about the time it has taken so far for her complaint to be resolved I think it reasonable to set a four-week deadline for the payment of any compensation to her. If that time is exceeded then I will direct SJP to pay additional compensatory interest to Mrs A.

Putting things right

I think that Mrs A's pension savings should have been transferred to the new provider sooner than they were. I think that, had the transfer progressed as might reasonably be expected, Mrs A's pension savings would have been reinvested on 16 November 2020. So, to put things right, SJP should;

- Calculate using the information to be provided by Mrs A's investment manager, as at the date of this final decision, the notional current value of Mrs A's current pension plan had her pension funds been transferred and reinvested in line with the approach taken by Mrs A by 16 November 2020. This is the notional value.
- Compare this value to the actual value of Mrs A's pension savings at the date of this final decision.
- If the notional value is greater than the actual value of Mrs A's pension, then Mrs A has suffered a loss and should be compensated accordingly. If the notional value is less than the actual value of Mrs A's funds, then there's no loss and no investment compensation is due.

Should SJP fail to pay the compensation to Mrs A within four weeks of receipt of Mrs A's acceptance of this final decision, and the performance data from her 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 Mrs A a certificate showing how much tax it's taken off if she asks for one

The compensation should be paid into Mrs A's pension plan. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

If SJP is unable to pay the total amount into Mrs A's pension plan, it should pay that amount direct to her. But had it been possible to pay into the 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 Mrs A's expected marginal rate of tax at retirement. I think it's reasonable to assume that Mrs A is likely to be a basic rate taxpayer at retirement, so the reduction would equal 20%. However, as Mrs 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%.

SJP should pay Mrs A a further sum of £100 in respect of the distress and inconvenience this matter has caused to her.

My final decision

My final decision, for the reasons given above and in my provisional decision, is that I uphold Mrs 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 Mrs A to accept or reject my decision before 23 March 2023.

Paul Reilly
Ombudsman