

The complaint

In summary, Mr J complains that a lump sum payment to him from his pension was delayed by Interactive Investor Services Limited (IISL), trading as Interactive Investor.

What happened

On 19 August 2022, Mr J submitted an online application to IISL to take a pension commencement lump sum (PCLS) from his pension, utilising Flexi-Access Drawdown. As part of the application process IISL asked Mr J to complete a pension benefit questionnaire. Mr J did this and elected not to take any income from the remaining fund.

IISL confirmed receipt of Mr J's request on 19 August 2022 and issued him a benefit request summary document the same day. This informed Mr J that documents issued to his online account were an illustration showing the benefits he had requested, pension summary of the SIPP, personalised risk warnings based on his benefit questionnaire answers, a reminder of his open market options, a money helper fact sheet, risk warnings he had been provided with before he started his benefit request, a summary of the key assumptions and personal data used and a leaflet explaining his investment options.

It also contained a Lifetime Allowance (LTA) declaration which included details of previous pension benefits he had taken in 2017/2018. It said that unless he disagreed with anything in the declaration or needed to change his LTA declaration, there was nothing else he needed to do. It went on to say that if there was a problem with his request or if it needed additional information before it could process it, it would be in touch.

No further information was requested from Mr J. His benefit payment request was processed, and payment of the PCLS made to Mr J on 26 August 2022. When Mr J received the payment, he questioned the amount he had been paid as it was less than he was expecting.

On 30 August 2022, IISL sent Mr J a summary of the retirement benefits he had taken. And it enclosed a benefit crystallisation event (BCE) statement which showed the percentage of the LTA that had been used up. This said that a type 1 BCE and a type 6 BCE took place on 24 August 2022.

In response to Mr J's concerns IISL said the illustration provided an overview of his account at that time. But the BCE took place during the processing of his request which could take 5-10 working days to complete. When the BCE took place, the value of his SIPP changed.

In response, Mr J asked why the value of his funds at the time of the request couldn't be used. His decision simply seemed to trigger the request for action by its team who recalculated the request 5-10 working days later. He couldn't see why the value could not be captured at the time of the request or within a trading day of it.

In its final response IISL said the BCE took place during the processing of his request which could take 5-10 days to complete. It also said the benefit request had been processed using the illustration date of 24 August 2022 with payment made on 26 August 2022. It went on to

say that page 16 of the illustration explained that the amounts shown weren't guaranteed. It had credited his account with £50 as a goodwill gesture.

Mr J's concerns were looked into by one of our investigators. They explained why they thought the value of Mr J's pension at the time his request to take benefits was received, should have been used to calculate the value of Mr J's PCLS.

In response to the investigator's view, IISL said it was following the guidance laid down by legislation and HMRC guidelines. It said its key facts illustration stated that the figures quoted weren't guaranteed. It referred to PTM088200 in HMRC's pension tax manual (PTM) in respect of the lifetime allowance charge and benefit crystallisation events. And it said for BCE1 the date of the BCE is the date the funds are designated as being able to provide the member with a drawdown pension. It went on to say that it was the actual point the funds were available to be designated to provide benefits that was relevant.

In addition, it said HMRC's note under PTM088400 set out that where the benefits were being taken by the member, the benefits crystallising for lifetime allowance purposes would be the actual entitlements the member ends up with under the arrangements. And the effective date of such BCEs would be the date the entitlements arise (not the point the scheme administrator first wrote to the scheme member telling him about his options under the scheme. It believed taking into account the guidelines and legislation, it had acted correctly in processing the benefits when the entitlement actually arose, not when the member first made the request.

The case was passed to me for review. I issued a provisional decision on 9 May 2023 explaining why I was intending to uphold Mr J's complaint. I asked for responses by 23 May 2023. Mr J replied accepting my decision. IISL replied providing further arguments and evidence as to why it disagreed with my provisional decision. In summary:

- It didn't think the timescales in which it dealt with Mr J's request to take benefits were unreasonable.
- The documentation provided to Mr J and its website explained how long it would take for Mr J to receive his benefits once requested. The illustration he had been provided with also explained that the figures quoted weren't guaranteed.
- The online benefits journey didn't guarantee that the benefits were paid out / calculated on the day the member made the benefit request. It referred to a situation where a member hadn't provided documentation in relation to LTA protection, and the impact on the calculation of benefits if there were delays in the information being provided.

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.

Having done so, I remain of the opinion that Mr J's complaint should be upheld. I've set out my reasoning again below.

IISL has in essence, argued that the BCE took place during the processing of Mr J's request to take retirement benefits, which could take 5-10 working days to complete. When the BCE

took place the value of his SIPP changed. The summary it sent Mr J on 30 August 2022, indicates that this was on 24 August 2022. And IISL seems to be suggesting that the valuation of Mr J's pension couldn't take place until that point.

In support of its arguments, IISL has referred to several provisions from the PTM that it thinks is relevant to this issue. In particular it has referred to PTM88200 and PTM088400. I've summarised the main points that it has made above.

I'm not persuaded by the arguments IISL has made. I say this because I don't agree with its interpretation of the application of the PTMs it has referred to, and the time frame for calculating and processing Mr J's request to take benefits from his SIPP. I don't disagree that when Mr J requested to take benefits from his SIPP, the benefits that he wanted to take would be tested against his lifetime allowance. But I don't agree with its interpretation as to when Mr J's entitlement under the scheme arose.

I agree that the relevant BCEs in this case were type 1 and type 6, as Mr J was taking a pension drawdown with a PCLS. And PTM088200 explains that where a PCLS is being paid such as in Mr J's case, BCE6 (which was in respect of a PCLS) would be treated for LTA purposes, as occurring immediately before the associated crystallisation of BCE1. PTM088610 explains that a BCE1 LTA test is triggered when a member designates those sums or assets held in a money purchase arrangement, should be made available to provide a drawdown pension. And I think that would have happened when IISL received Mr J's request to take a PCLS using flexi access drawdown. Also, the note explains that the value crystallising at BCE1 is the sums and market value of assets that are designated for drawdown. In my opinion and in common with good industry practice, that was when IISL received Mr J's application submitted and received on 19 August 2022.

In its response to my provisional decision, IISL has referred to a scenario where further information was needed. I consider individual cases not hypothetical scenarios. In this case IISL issued Mr J with a benefit request summary document on 19 August 2022, which included an LTA declaration, but didn't require him to fulfil any further steps. It said if there was a problem with his request or if it needed additional information before it could process it, it would be in touch. But IISL didn't request any further information from Mr J, and it processed his benefits request based on the information he had submitted during the application process.

Similarly, PTM088670 explains that that date the BCE 6 is triggered is the date the actual entitlement to the linked pension benefit arises. In addition, the terms and conditions of the SIPP at paragraph 10.5.2, say that in respect of the valuation of assets, when new funds are designated for a drawdown pension (as in Mr J's case), once IISL has the current value of the SIPP, it will test it against the LTA, on the date the member specifies before paying the benefits.

And it seems to me that the entitlement to the PCLS would arise in this case, and the date Mr J specified in the context of 10.5.2, was when IISL received Mr J's confirmed request to take a PCLS using flexi access drawdown. So, considering the above, I don't think using the value of Mr J's funds on the date he submitted his application on 19 August 2022 is inconsistent with PTM88200 and PTM088400 that IISL has referred to, or its own terms and conditions.

IISL has said it doesn't think the timescale it dealt with Mr J's request to take benefits was unreasonable. I accept that it may well have taken a few days for IISL to process Mr J's request. But I don't understand why it would have taken up to ten working days to complete it, that IISL suggested it could take. In this case Mr J's application was processed and paid by 26 August 2022, but it says based on a 24 August 2022 valuation. And for the avoidance

of any doubt, I don't think the five working days that it took from receipt of Mr J's benefit payment request to the date the payment was made, was an unreasonable period of time for this payment to be processed and paid. The only issue I'm addressing is whether the 24 August 2022 valuation was the right one to use.

I've considered what IISL has said about the information Mr J was provided with indicating that the quoted figures weren't guaranteed. But I don't think it was fair of IISL to use the value of Mr J's SIPP, on the day it actually processed his request to take benefits. I say this because the terms and conditions of the SIPP make no reference to those timescales, so I'm not satisfied that IISL made Mr J aware of this timeframe.

Also in my experience, and in line with what I consider to be good industry practice, the valuation of funds used in respect of any request to take retirement benefits, would normally be at the point the request was received and all the relevant information and documentation had been received to enable the request to be processed; not when the request was processed. This is to ensure that all policymakers are treated equally even though processing timescales can fluctuate.

And as I've explained above, I don't think there was any outstanding information or documentation needed from Mr J, when IISL received his benefit request. In addition, as I've already explained, I don't think any LTA test would impact on requesting the encashment of Mr J's pension funds if required and using the fund value on the date the request to take benefits was received.

Putting things right

- 1) Interactive Investor Services Limited should compensate Mr J by obtaining the value for Mr J's SIPP on 19 August 2022 which was when his application was received.
- 2) It should compare this with the value of his SIPP at the date it calculated Mr J's PCLS.
- 3) If the PCLS in (1) is greater than the value of the PCLS in (2), then it should pay Mr J the difference.
- 4) Interest should be added to any shortfall calculated in (3) at the rate of 8% simple a year, from 26 August 2022 to the date of payment to Mr J, if he accepts my decision.

My final decision

For the reasons I've explained above, I uphold Mr J's complaint. If Mr J accepts my decision, Interactive Investor Services Limited should calculate and pay any compensation to Mr J using the methodology that I've set out in the section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 27 June 2023.

Simon Dibble
Ombudsman