

The complaint

Mr M says Interactive Investor Services Limited (II) changed how it took its fees from him without instruction and without informing him. He says certain of the fees are explicitly related to his Self-invested Personal Pension (SIPP), and yet these are being deducted from his Individual Savings Account (ISA).

Mr M says the practical effect of II's changes mean he is now bearing all the costs relating to his SIPP, but these should be shared with his wife, which would've been the case had fees continued to be taken from his pension. He says he has no income and limited capital, his SIPP funds are not accessible, so his ISA account effectively represents the only cash available to him.

What happened

Mr M opened his II SIPP in September 2019. At the time, he opted to pay for all charges directly from his pension account. I understand that in January 2022 a pension sharing order was made, meaning he would need to split this retirement provision with his ex-wife.

In March 2022, Mr M called II to enquire about opening an ISA. During this call, he explained he already had a SIPP and asked if there would be any additional charges. The call handler looked at his account and noted that as he was already paying its Super-Investor tariff and fees for his SIPP arrangement, there would be no extra charge. He proceeded to open an ISA.

On 19 April 2022 Mr M called II to query why the charges for his SIPP and ISA were being taken from his ISA account instead of his SIPP, as had been the case up until this point. II explained that if a customer had both a SIPP and an ISA, where there was no direct debit set-up and no trading account, then fees would be taken from the ISA account. It said this was the way its system worked and it couldn't be changed.

Mr M complained about what had happened. In its final response to him of 21 April 2022, II didn't uphold his complaint. It said if he didn't want fees to be paid from the cash held in his ISA he would need to open a trading account and add cash for the fees to be taken from there or arrange a direct debit to pay the fees.

Mr M wasn't satisfied with the position II had taken. He brought his complaint to this Service setting out his concerns in the following terms:

"[I] opened SIPP with II in October 2019. As part of the sign-up process I was asked whether I wanted to pay fees via direct debit or directly from my SIPP account. I elected the later, and fees were paid from my SIPP account from opening."

"In March 2020 I was considering opening an ISA and called II to understand what the incremental fees would be. I was told there would be no additional monthly fees, just the trading charges. I opened an ISA account with II on 1/4/22. On 10/5/22 the monthly fees were taken from my ISA account, rather than my SIPP account, as previously. I challenged this because:

- i. I had elected for fees to be taken from my SIPP account when I originally opened my account.*
 - ii. I was not told that this would happen when I enquired about the ISA account.*
 - iii. £10 per month of the fees are explicitly SIPP fees.*
 - iv. My SIPP is subject to a pension sharing order following divorce, and it is only fair that the costs of the pension are deducted from the pension account prior to pension sharing.*
 - v. I have no income and limited capital; The funds in my ISA account represent cash that is accessible to me, whereas the SIPP account is not accessible.”*
- “II’s response to my claim cites an excerpt from their Terms & Conditions which is conditional on having a Trading Account - I do not hold a trading account with them so the clause clearly does not apply. There is no provision in the SIPP terms of services which allows II to deduct SIPP charges from my ISA account. The SIPP Terms refer to the "Rates and Charges" document, but there is no such document available on their website...”*

An Investigator considered Mr M’s case. She didn’t uphold his case. She didn’t think II had provided him with factually inaccurate information and that it was adhering to its terms and conditions. Mr M disagreed.

As both parties couldn’t agree with the Investigator’s view, Mr M’s complaint was passed to me to review afresh. I issued my provisional decision in April 2023 upholding his case but not to the extent he wanted.

Mr M rejected my decision. In broad terms, he thought I hadn’t considered all the evidence he’d provided; he didn’t think I’d inspected II’s workflow and charging structures properly; nor did he consider the compensation I’d suggested was adequate given the impact the problems he encountered had on him. I’ve considered his arguments in arriving at my 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.

Where there’s conflicting information about the events complained about and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what’s most likely to have happened.

I’ve not provided a detailed response to all the points raised in this case. That’s deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I’ve taken into account all submissions, I’ve concentrated my findings on what I think is relevant and at the heart of this complaint.

I’m upholding Mr M’s complaint, but not to the extent he’d like. I’ll explain why. The first thing I’ve considered is the extensive regulation around transactions like those performed by II for Mr M. The FCA Handbook contains eleven Principles for businesses, which it says are fundamental obligations firms must adhere to (PRIN 1.1.2 G in the FCA Handbook). These include:

- Principle 2, which requires a firm to conduct its business with due skill, care and diligence.
- Principle 6, which requires a firm to pay due regard to the interests of its customers.

- Principle 7, which requires a firm to pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

So, the Principles are relevant and form part of the regulatory framework that existed at the relevant time. They must always be adhered to by regulated firms. As such, I need to have regard to them in deciding Mr M's complaint.

It isn't the role of this Service to interfere with how a business designs its products and processes, the fees it charges or how it wants to run its operations. These are properly commercial considerations. And no doubt each business will want to be competitive in terms of the offer it makes to a customer. Of course, in doing these things firms do need to ensure adherence to the relevant regulations.

Mr M provided a copy of the terms and conditions for his SIPP. At 12.1 (Payment of Fees) these say:

'You agree to pay fees relating to the provision of the Scheme which are detailed in the Rates and Charges on our website www.ii.co.uk, which also confirms details of how fees are collected... You authorise us to deduct SIPP fees and any other amounts due from your account(s) in the manner set out in the Rates and Charges.'

He also supplied a copy of the associated Rates and Charges document. He was concerned this Service hadn't considered this, or that it had somehow been corrupted in the process of being uploaded to our system. I can assure him that I've read the document and that I've no reason to doubt its veracity.

In responding to my provisional decision Mr M also said:

"...I maintain that the 'Rates and Charges' document referenced in the SIPP Terms and Conditions is the submitted document 'ii-Rates-and-Charges-01September2022.pdf' and that this document contains no basis for the charging practices I have implemented."

"If the Ombudsman has a contrary view he needs to explain why a document with an explicit link to the SIPP Terms & Conditions should be ignored in favour of a web page not referenced in the contract."

It has referred to information on its public website about its fees and how they operate. By navigating to the help area, then selecting fees and charges and then how to pay your monthly fee, an explanation is provided.

In summary, this indicates setting-up a direct debit as the easiest way to pay monthly fees. If a customer doesn't want to set-up a direct debit, II's system for recovery of fees then tries to recover cash from other accounts the client holds. The scenarios listed are:

- (i) *Hold a trading account with a linked ISA and /or SIPP account.*
- (ii) *Hold a trading account only.*
- (iii) *Hold an ISA only.*
- (iv) *Hold a SIPP only.*

Prior to April 2022 Mr M didn't have a trading account or an ISA. As he chose not to set-up a direct debit, his fees were deducted from available cash in his SIPP, as provided for under scenario (iv).

However, when Mr M set up his ISA, II's system worked through its steps in accordance with scenario (i). There was no direct debit instruction and no cash in a trading account (indeed he didn't have one to take funds from), so it then looked for cash in his ISA and took the fees from there.

Mr M's arguments aren't without merit. I appreciate when he opened his SIPP his expectation was fees would be taken from his available cash. He wasn't made aware things would change when he opened up his ISA account. I also agree that the 'Rates and Charges' document he's provided doesn't show the mechanism(s) by which II would recover monies due.

But the fact is the services Mr M wanted from II changed. And it has decided to treat customers in his situation, with multiple accounts, in a different way in terms of the mechanics of recovering charges, to those who hold just a SIPP.

Having reviewed the information on II's website I don't find this as clear as it might be. I say this because as I established in my provisional decision, it doesn't cater for the situation Mr M was in, that is he didn't have a trading account. So had he looked at the information provided about how charges would work following the establishment of his ISA, on the face of it his situation wasn't catered for.

I've listened to the conversation Mr M had with II's call handler. He asked about fees if he were to open an ISA. After looking at his service plan, II informed him there were no extra fees. At no point during the call did either party discuss how the charges would be taken should he open the new account.

Taking all these matters in the round, I can see a reasonable argument from both parties here. From II's perspective Mr M didn't ask about how the fees would be taken. He didn't mention his specific circumstances, in particular around the pension sharing order. And at no point was it holding itself out as providing advice.

But if we think about Mr M's position, he was being told there would be no new charges as a result of opening up an ISA. And so what would've given him cause to think the approach to payment of fees would change? And I've already covered what is a weakness in the online information that II says was available to him about this.

I think that II's call handler should at least have alerted Mr M to the fact that fees and charges are taken according to the combination of whatever accounts are held by a customer. It could also have referred him to check on their website for more information. However, had he done so, its likely further clarification would've been required for the reasons I've established.

Mr M has told us about the real effect on him of the change in how II collected its fees when he opened up an ISA. Because he will be subject to a pension sharing order I can understand why he considered any fees and charges that related to his SIPP should be borne by both him and his ex-wife. But taking fees from his ISA, he was in effect bearing all the costs and that wasn't appropriate for his situation. He's also told us the ISA was his only available source of cash, so I can see he wanted to manage that position carefully.

II has made clear to Mr M that it won't change its system of how it takes fees from accounts, and as he has now got an ISA and a SIPP, it will take his fees from cash in his ISA in the absence of a direct debit instruction or cash in a trading account.

Part of Mr M's initial frustration was being told II couldn't take fees from his SIPP. Presumably this is how it has designed its system. As Mr M used to pay fees from his SIPP

it's clear this was possible. But where additional accounts are added it has decided on a process flow that then excludes that possibility. That is its commercial decision to make, and so it wouldn't be proper for me to direct it to do otherwise.

Mr M will need to decide what steps to take next to regularise the position for his pension arrangements. For example setting up a direct debit, putting funds into a trading account or reverting to his position pre April 2022.

Mr M has also informed this Service his pension sharing order hasn't yet been given effect. Although splitting his SIPP costs will no longer be an issue once that is in place, I appreciate his concern relates to costs incurred beforehand. He may want to explore arrangements with his former wife to agree a fair approach.

Putting things right

Mr M says the £100 award I made for trouble and upset was too low. He went on to describe certain fees and charges (some of which have been outstanding for 9 months) and the impact of withdrawing money from his ISA.

I'd observe that Mr M has a responsibility for mitigating any financial losses arising from his current situation. While his complaint has been ongoing for several months, he has known about the fees and charges that needed to be met. The dispute has been about the appropriate mechanism for making payments. He knew about and should've managed any financial exposure effectively. To be clear, I'm not making any award for financial detriment.

Rather, I've concluded II failed to communicate its approach to charging in a clear and fair way. Given Mr M's circumstances, this has complicated his pension arrangements. It's also put more pressure on his available ISA cash than he was planning for.

When I'm considering a complaint like Mr M's I think about whether it's fair to award compensation for distress and inconvenience. This isn't intended to fine or punish a business – which is the job of the regulator. But when something's gone wrong, recognition of the emotional and practical impact can make a real difference.

We're all inconvenienced at times in our day-to-day lives – and in our dealings with other people, businesses and organisations. When thinking about compensation, I need to decide that the impact of a firm's actions was greater than just a minor inconvenience or upset. It's clear to me that this was the case here.

I remain of the view that Interactive Investor Services Limited should pay Mr M £100 for the trouble and upset it has caused him.

My final decision

For the reasons I've set out, I'm upholding Mr M's complaint but not to the extent he'd like.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 20 July 2023.

Kevin Williamson

Ombudsman