

The complaint

Mr M says Aberdeen Standard Fund Managers Limited ('ASFML') is responsible for the delay in liquidating his fund holding and remitting the proceeds to his Self-Invested Personal Pension ('SIPP'). ASFML disagrees. It says it did not delay the liquidation and did not delay the remittance, that the latter was delayed because of previous and ongoing failures by the SIPP administrator to meet its Anti Money Laundering ('AML') requirements, and that in any case the payment mistakenly was released earlier than it should have been.

What happened

I issued a Provisional Decision ('PD') for this case on 5 July 2023.

The PD summarised the background as follows –

"ASFML was the fund manager for the relevant fund(s). Mr M's holdings in the fund(s) – in the ASI Global Sustainable & Responsible Inv Eq A Acc and the ASI UK Real Estate Share Fund Acc A Share OEIC (the 'holdings') – were within his SIPP. The SIPP therefore held a corresponding account with ASFML for this purpose, in the name of BW SIPP Trustees Limited ('BW1'). The Trust for the SIPP was in the name of Barnett Waddingham SIPP ('BW2'), and the Pension Administrator for the SIPP was BW SIPP LLP ('BW3'). All three entities were known and noted on the ASFML account.

Available evidence shows the following chronology of key events:

- Within ASFML's operations, BW1's AML verification status was updated/passed in February 2021 and BW2 had its AML verification status passed in 2019, but there was a need to update BW3's AML verification status in 2021. Also in February 2021, ASFML wrote to BW3 requesting evidence (and offering guidance) to complete this.*
- BW1 first submitted the instruction to liquidate the holdings, and to close the account, in September 2021. The instruction had to be resubmitted in October 2021 due to an earlier address related issue, and ASFML confirms that the holdings were liquidated on 11 October 2021. The proceeds were held pending remittance.*
- The verification of BW3's AML status remained outstanding, so on 18 October 2021 ASFML wrote to it to resume the process, and it gave notice that the proceeds could not be released until this had been successfully completed. The matter continued into November, and ASFML specified that it needed from BW3 – additional documents for the confirmed entity of 'Regulated Personal Pension Scheme' [item 1]; a completed Wolfsberg Questionnaire ('WQ'), "a full list of directors, shareholders and PSC [Persons with Significant Control] with their names, addresses and dates of birth" [item 2]; and an updated structure chart [item 3]. ASFML says it needed this information because BW3 was a separate entity to the pension scheme.*
- ASFML received some information on 18 November but, on 6 December, it wrote to BW3 again. It acknowledged what was received on 18 November. It also stated that items 2 and 3 had not been received and remained outstanding.*

- *On 7 December BW3 complained about the matter. On 8 December Mr M contacted ASFML. He affirmed the complaint and enquired into the cause for delay in the remittance. He was given a summary of what was happening between the two firms. They spoke again on 15 December and he was told there had been no progress in ASFML receiving the information required. It was also clarified to him that the holdings had been sold and that the matter to resolve was the AML verification before remittance.*
- *ASFML responded to the complaint on 20 January 2022. In its response, it mainly reiterated the outstanding AML requirements and that the liquidation proceeds would be released after they were successfully met.*
- *In March, ASFML received a response from BW which included a part completed but unsigned WQ. BW said information requested was disproportionate to the action required in the matter (hence its omission of the inappropriate parts of the WQ), that it had met and discharged AML obligations within its operations, and that information about it was in Companies House's records and in the regulator's register (links to which it included), so all other relevant information required could be obtained there. Mr M also made further contacts with ASFML, for updates, in this month.*
- *In early April another complaint about the delayed remittance was raised to ASFML. With guidance on the matter, it then determined that it could accept what it had received for BW3's AML verification at the time, and on 8 April it updated BW3's AML verification status to passed. On 12 April it released the liquidation proceeds."*

One of our investigators looked into the complaint and concluded that it should be upheld. She gave reasons for this conclusion, and for the form of redress she proposed. ASFML disagreed with her findings. The PD summarised its grounds for doing so as follows –

"It mainly said:

- *It is true that it could have made the discretionary decision earlier, but it is also true that it could have rightly withheld its discretion and insisted on its requirements being met in full. Upholding the complaint because its discretion could have been applied earlier unjustly penalises it for applying its discretion at all, and for doing so in the customer's interest. The effect of such an uphold is that it will be potentially discouraged from doing so in future similar circumstances, and from seeking to meet a customer's best interest. This seems to set an unhelpful precedent.*
- *The investigator's conclusion also applies an arbitrary timescale to the matter, in terms of when the remittance would have happened in the scenario she cited.*
- *In terms of referral to its compliance department, it had a procedure to follow and exhaust. It was reasonable to follow that procedure and the notion of escalating, directly to such a referral, at the first situation that questioned the procedure defeats the purpose of having it.*
- *The investigator's view is silent on the fact that the remittance happened before it should have happened. Mr M's AML verification was outstanding and should have been successfully completed before the remittance, but this was overlooked in error. Despite its error in this respect, it is illogical to say it is responsible for a delayed remittance which, in fact, happened earlier than it should have."*

The PD was issued because some of my findings differed from the investigator's. However, I too concluded that the complaint should be upheld. I said –

“The main issues in the complaint are the liquidation of the holdings and remittance of the proceeds. With regards to the latter, the three sub-issues are – the AML verification required for BW3, the AML verification required for Mr M and the discretion ASFML eventually applied to the matter (associated with or including the compliance/AML team referral).”

Like the investigator, I too find no wrongdoing on ASFML's part with regards to liquidation of the holdings. The delay between the instructions in September and October was not its fault. The address related issue was important enough to warrant attention and resolution before the instruction could be carried out. When it was resolved, the liquidation was carried out without delay.”

“I agree with the investigator's revised view that ASFML was entitled to make the relevant AML enquiries because the sum of the AML regulations and guidance it was following gave it a basis to do so. Having said this, it is also a matter of fact that Mr M's complaint is about the liquidation instruction and the remittance delay – as he set out in his letter of 24 June 2022.

I highlight this in order to set the correct context for the findings that follow in this decision. I accept that ASFML was entitled to make relevant and required AML enquiries. However, this decision is not about appraising its AML verifications process in general or in the present case. With regards to determining responsibility for the delay that Mr M has complained about, attention should be given to the factual events and to how ASFML conducted its enquiries.”

“First, I consider the AML verification for Mr M that ASFML omitted to complete. The fact is that the remittance was made without this completion, so the implication is there was room for this to happen. ASFML must have had discretion and/or capacity for error to make the payment without completing verification for Mr M. It appears to say the latter was the case, and I consider that to have also been broadly under its discretion. To argue otherwise would be to say ASFML committed a breach of its AML responsibilities by making the payment in these circumstances – it seems that it either had a form of discretion to make the payment or it did so in breach. I have not quite seen such a concession from it and, I repeat, it is beyond the remit of the complaint to appraise its AML verification process.

The payment was released without AML verification for Mr M because ASFML appears to have had broad discretion to do that. This suggests there was no absolute requirement, in the specific circumstances of this case, that meant it had to be released later (after such verification) or not at all (without such verification). In this context, the argument that it was released ‘early’ appears to fall away. Even if it is argued that the payment could have been released later, after the verification, the fact remains that its release did not have to await that because there was broad discretion not to do so.

A similar analysis applies to the AML verification required for BW3. It is a matter of fact that, in the end, BW3 did not meet all the requirements ASFML presented to it. The rights and wrongs of that are irrelevant to the complaint because it is also a fact that ASFML took the discretionary decision that it could proceed with the remittance based on what it had at the time. As the investigator considered, it is therefore important to take a view on when this decision was applied and whether (or not) it could and/or ought reasonably to have been reached and applied earlier.

On balance, I am persuaded that it ought reasonably to have been considered, reached and applied earlier, and I repeat reference to ASFML's concession that it could have been

applied earlier.

Its decision was applied in early April 2022.

ASFML had asked for items 1, 2 and 3. As of 18 November 2021, items 2 and 3 were outstanding. By the end of March 2022 only a part completed and unsigned WQ was received, and BW3 essentially directed ASFML to obtain information elsewhere to satisfy the other requests in item 2 and the request in item 3. This remained the situation, in terms of receipts from BW3, up to the point the payment was released in April. Overall, the main difference between what ASFML had received by 18 November 2021 and by March/April 2022 was the partly completed unsigned WQ. For the reasons I consider below, this was not a meaningful difference.

ASFML shared with us some internal communications, with its AML team, showing the reasoning it applied in deciding to proceed with the payment release despite BW3 not meeting most of its requests. The communications including the following –

“Would it be fair to say then that we’ve verified the Pension Admin on the strength of what they’ve provided to date (the partial Wolfsberg and accompanying explanation and documents), but that this can ultimately be seen as a discretionary decision?”

“Yes I am comfortable that we have sufficiently verified the Pension Administrator on the basis that we can verify them on the FCA register (which they also confirmed via email) and they have provided an explanation as to why parts of the Wolfsberg questionnaire were left incomplete as a result of those questions not being applicable to them. Although they did not provide the structure chart, I was able to use the links they provided to Companies House to evidence that BW SIPP LLP is part of Barnett Waddingham LLP, another FCA regulated firm. On this basis, I was comfortable to accept the documents provided for the Pension Administrator without the need for further documentation to be requested.”

By its own admission most of the information (outside the WQ) it sought could have been obtained by ASFML through the regulator and Companies House, and there was no need for further documentation beyond that. There is even more detailed correspondence with the AML team which further illustrates this finding.

With regards to the WQ, it presented over 110 questions to BW3. This was so because some of 110 main questions were divided into sub-questions. Out of all these questions, BW3 appears to have answered only 12 of them – those being questions about its legal name/address/legal entity identifier, its date of incorporation, its share ownership, whether (or not) it operated under an Offshore Banking License, its regulator, its business areas and the number of its employees. As stated earlier, the WQ was returned unsigned.

In the end, ASFML accepted the returned WQ as it was. The implication arising from that, in the wider context it described in the above quote, is that whilst it was entitled to make AML enquiries in the case, the vast majority of the WQ fell outside what was relevant. If it disputes this finding a point similar to that mentioned previously arises – it seems that the vast majority of the WQ, which was not completed, was irrelevant or, if it was, then ASFML committed a breach by accepting the WQ without completion of that vast majority (and without it being signed). Again, I am not appraising its AML process, so I do not make any finding on the latter, but it is an obvious implication that should be noted.

Another finding on the WQ is that its partial completion contained information, as summarised above, that would have been accessible in the corporate and regulatory records that ASFML ended up using. Their presentation within the WQ was not unique.

Based on all the above, an argument that might be made is that the remittance delay happened mainly because ASFML waited for items 2 and 3 until April 2022, that it ought not to have done that, and it should have acted earlier to obtain information matching both items elsewhere, as it eventually did.

I am mindful of ASFML's point about making findings that defeat the purpose of having its AML process in place, and its point that it would be unreasonable to expect the process to be abandoned at its first challenge. I agree that its process had the legitimate purpose of discharging its AML responsibilities and I do not seek to diminish that purpose. However, it is the purpose that was/is paramount, so the point to address is not about abandoning the process at the first sight of challenge, but about whether (or not) it ought reasonably to have been adjusted earlier to address problems and to achieve the purpose. This is essentially what ASFML eventually did when it adjusted its application of the process to conclude the verification, and then to remit the sale proceeds.

Its request for information in October 2021 was reasonable, especially as that was a follow-up to its previous request (made even before Mr M's case arose). It was also reasonable for it to pursue the request up to its email on 12 November, because it had received nothing by that point.

By 18 November item 1 appears to have been satisfied, so at this point only items 2 and 3 were outstanding, and it asked for these on 6 December. Shortly thereafter, in the same month and crucially (in my view) problems arose in the form of the following – on 7 December BW3 complained (on its and Mr M's behalf) about the matter, it considered that most of the information ASFML was asking for was already available or accessible; on 8 December Mr M contacted ASFML, and did so again seven days after, in both contacts he affirmed the complaint and expressed his concerns about the matter.

The facts show that, in the end, BW3 was correct, because by April 2022, and other than submitting the unsigned and minimally completed WQ, it had done no more since 18 November 2021, yet its verification was successfully completed. This should not be viewed as a criticism of ASFML's decision to apply its discretion. What it did is commendable. The problem is that it delayed in doing it, without good reasons for the delay. The period between the complaints in December 2021 and the verification completion in April 2022 mainly featured both firms adopting broadly unyielding positions, then at the tail end of this period ASFML essentially acknowledged that it had and/or could have obtained enough information to complete verification all along.

ASFML could say the WQ was not received until the end of March 2022, so this has been omitted from the statement above. I consider that the facts show that the WQ was devalued in this case. Only 12 of over 110 questions in it were answered. Those answers contained basic information related to BW3 that was already previously available and/or accessible in regulatory and corporate records. The WQ was not even signed or dated.

Overall and for the above reasons, I consider that BW3's complaint on 7 December 2021 and Mr M's contact the following day to affirm the complaint were pivotal events. They brought to ASFML's attention that its verification process was facing a notable problem, one in which Mr M's interests were at stake. At the heart of the problem was information it required about BW3, so that was the issue to address. The impression given by available evidence is that it initially misdirected itself, it lost sight of the true task and instead it focused on insisting that BW3 comply with its demands. Eventually, it acknowledged that obtaining requisite information, alone, was the true task and that it already had such information and/or already had access to such information.

It follows from these findings that ASFML should have reacted differently to the complaints of

7 and 8 December. There is evidence from it that says –

“We received an email from BW SIPP LLP on 28 March 2022 providing a completed Wolfsberg Questionnaire and some additional information for the company. These details, along with the previously received documents, were referred to our Head Office AML team to review in line with our corporate AML verification requirements. Having reviewed the documents provided by BW SIPP LLP and established that these were acceptable in order to verify them, we updated their AML status to ‘Passed’ on 8 April 2022 and the proceeds were released via BACS on 12 April 2022.”

Within what is described above was an email from BW received by ASFML on 5 April 2022, making broadly the same point as had been made in the 7 December 2021 complaint. It treated the email as a complaint, and on the same day it began to liaise with its AML team for guidance on how to resolve the matter. Evidence of its communications with the AML team between 5 and 8 April has been shared with us. Like the quote above says, by 8 April the team approved the updating of BW3’s AML status to passed.

On balance, I am persuaded that something similar should have been done from 8 December 2021, at the latest. Two complaints had been received between 7 and 8 December and the core message to ASFML at the time was broadly the same as it remained up to the complaint on 5 April 2022. The second complaint prompted meaningful action by ASFML, and I consider that the first should have done the same. As I said above, obtaining the required information was the true task. It is evident in its internal communications with the AML team between 5 and 8 April that focus was rightly on this task and the contents of the communication show how the relevant existing, identified, accessible and identifiable information was considered, up to the point that they could be satisfied to pass BW3’s AML verification. The same could and should have happened in response to the first complaint.

ASFML reacted to the complaint of 5 April immediately, by contacting its AML team for guidance, by 8 April the issue had been resolved and by 12 April the remittance happened. That, including the first and last dates, amounted to four working days to resolve the AML verification and six working days to reach the point of remittance. Had the same or similar been done from 8 December – in response to the complaints on 7 and 8 December – it is reasonable to conclude that the same periods of time (four and six working days, including the first and last dates) would probably have been used to resolve the verification issue and to remit the relevant proceeds. In other words, the remittance would probably have happened on 15 December 2021.”

Both parties were invited to comment on the PD. Mr M mainly said he accepted the PD and its findings, but he also holds the views that the provisional compensation, in the PD, for the trouble and upset caused to him – £200 – is insufficient, and that the same applies to the PD’s award for financial loss.

ASFML agrees with the £200 trouble and upset compensation. However, it says it strongly disagrees with the PD’s other findings because –

- In the PD, I showed uncertainty about whether (or not) there had been an error in the remittance being actioned despite having no AML verification for Mr M. The remittance was definitely done in error, it should not have happened, had its procedure been properly followed it would not have happened and, contrary to the PD’s finding, it did not happen as a matter of discretion. This therefore supports its contentions that, overall, the remittance was not delayed and that it was made earlier than it should have been made.
- The PD repeatedly acknowledges that it is beyond its scope to appraise ASFML’s

verification process, yet it simultaneously “... suggests that [ASFML] should have softened [its] requirements at an earlier date than otherwise would have been the case”.

- *“Any discretionary decision taken by abrdn is considered individually on a case-by-case basis and should be considered only when attempts to submit acceptable AML documentation have been exhausted as a ‘last resort’. There is a clear level of risk attached to releasing monies to an unverified party and, as you know, abrdn are obligated to protect our investors from such risks and we treat these duties with the utmost importance. The Wolfsberg Questionnaire and additional details provided by BW SIPP LLP which allowed us to verify them were not received until 28 March 2022; it was not until we had received this additional information that our AML team were able to make an informed decision to verify BW SIPP LLP on a discretionary basis. There is nothing to suggest that we had received enough information from BW SIPP LLP at the time of their complaint on 7 December 2021 which would have allowed us to verify them.”*

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 have reviewed the complaint and the PD in light of both parties’ comments. Having done so, I retain the findings and conclusions in the PD, and I incorporate them into the present decision.

With regards to redress and compensation, the PD said –

“... I will award redress to Mr M in the form of interest – to compensate for the delay in having access to his funds (in the remittance) – to be calculated at the rate of 8% simple per year between 15 December 2021 (when the funds should have been released to his SIPP) and 12 April 2022 (when the funds were eventually released to his SIPP).

I also endorse the investigator’s award of £200 for the trouble and upset caused to Mr M. There is evidence that he was actively involved in the overall pursuit to resolve the delayed remittance and that he contacted ASFML several times between December 2021 and March 2022. This would have been an ongoing source of trouble and upset for him, whilst it lasted and I consider that an award of £200 will fairly compensate him for that.”

Mr M’s view about redress is that the interest payment does not fully cover the consequence of not receiving the remittance in time for its intended purpose. Whilst there is evidence of the delay in releasing the proceeds, and therefore evidence that the same delay affected access to his funds, there is a lack of evidence to show a specific financial loss incurred with regards to subsequent use of the proceeds – and a lack of evidence that any such loss resulted directly and mainly from the delayed access. Furthermore, and depending on the circumstances, an additional consideration could be whether (or not) any such specific financial loss, if proven, was sufficiently foreseeable to ASFML to make it liable for redress – this too has not been established.

For these reasons, I consider it fair to limit redress to what the PD set out.

As I reflected and acknowledged in the PD, Mr M played a part in contacting ASFML to progress the remittance. However, it is also fair to say that the main contacts in this respect were made by BW3 and BW. This included the two complaints they submitted on his behalf. Overall, I consider that their involvement (on his behalf) had the effect of mitigating the

trouble and upset he directly endured. In this context, I am satisfied that £200 is fair compensation for the extent of trouble and upset he faced in the matter.

I now turn to ASFML's comments.

As I included in the quoted summary above, my findings on the release of funds despite the absence of Mr M's AML verification were that – "... *the remittance was made without this completion, so the implication is there was room for this to happen*"; "*ASFML must have had discretion and/or capacity for error to make the payment without completing verification for Mr M. It appears to say the latter was the case, and I consider that to have also been broadly under its discretion*"; "*This suggests there was no absolute requirement, in the specific circumstances of this case, that meant it had to be released later (after such verification) or not at all (without such verification)*"; "*In this context, the argument that it was released 'early' appears to fall away*"; "*Even if it is argued that the payment could have been released later, after the verification, the fact remains that its release did not have to await that because there was broad discretion not to do so*".

The above shows that I was not unsure about whether (or not) there had been an error in releasing the payment without AML verification for Mr M. This was clearly presented in ASFML's submissions and I reflected it in the PD. However, I found that, in a broad sense, ASFML's error happened *broadly under its discretion*. As I further stated, the fact that the release happened means it could happen, despite the missing verification.

I understand ASFML's point in this issue. It is not unreasonable for it to argue that, but for the error, the release *should* not have happened. However, it is a different argument to say the release happened "earlier" than it would have, but for the error.

First, I repeat that the facts show the release happened when it did because it could. If ASFML's operation was such that, despite any human error, the release could not be processed without Mr M's AML verification on its system, then the release would not have happened. This is why I considered in the PD that there was capacity, or an implicit broad discretion, that allowed for the payment to be released despite the error.

Secondly, the error only establishes a failure to conduct the verification prior to payment. It does not automatically establish that, without the error, the verification would certainly or probably have delayed the payment beyond 12 April 2022. ASFML should arguably have resolved Mr M's verification earlier than this. The verification is not something that arose afresh in April 2022. Starting from October 2021 and up to March 2022 ASFML had at least around five months (prior to April 2022) within which to complete it.

The third point to note is that if, as the PD found (and as I address next), BW3's AML verification was concluded in December 2021 as it should have, and even if Mr M's AML verification remained outstanding at that time, I have not seen evidence to show that it would have taken over four months (up to and beyond April 2022) to complete that verification. It is more likely (than not) that it would have been completed relatively promptly.

In other words, in the full context of the case and given the combined implications of the three points above, the error that ASFML refers to does not, on its own, establish that the payment in April 2022 was made earlier than it should or would have been.

The third point above might prompt ASFML to argue that a need to await completion of Mr M's AML verification in, and possibly after, December 2021 defeats the PD's finding that the payment should have been released on 15 December 2021. I would disagree. As noted in the second point above, ASFML had the responsibility to conclude Mr M's AML verification and it had time from October 2021 to do so. It is not unreasonable to say it ought to have

done so before or by 15 December 2021, given that the process would probably have been comparatively easier to apply for him, as an individual, than for BW3. As such, I do not find that there would (or should) have been a need to await completion of Mr M's AML verification as of 15 December 2021.

The PD did not quite say or suggest that ASFML *should have softened [its] requirements at an earlier date than otherwise would have been the case*.

I consider that the findings quoted above show that my analysis in the PD was based upon identifying what ASFML did in April 2022 to conclude the verification and remittance, identifying the circumstances that led to what it did in that month, and then considering whether (or not) the same or comparable circumstances existed earlier. I found that the circumstances in April 2022 which led directly to it passing BW3's AML verification and releasing Mr M's payment were broadly the same as, or comparable to, those in December 2021. I set out the reasons for this finding (also quoted above). On this basis, it was and is apparent that ASFML could have acted in December as it did in April and, on balance, I found that it *should* have.

The issue was/is not about ASFML softening its requirement earlier than otherwise would have been the case. The PD showed, with evidence (including evidence from within ASFML and from its submissions) that most of the requirements it put to BW3 and continued to pursue in 2022 were arguably redundant. By late 2021 the information it sought was already received and already available or already accessible elsewhere. This included the information sought in the WQ, which as a matter of fact (and for reasons given in the PD) was essentially devalued in the present case.

ASFML says *"The Wolfsberg Questionnaire and additional details provided by BW SIPP LLP which allowed us to verify them were not received until 28 March 2022; it was not until we had received this additional information that our AML team were able to make an informed decision to verify BW SIPP LLP on a discretionary basis. There is nothing to suggest that we had received enough information from BW SIPP LLP at the time of their complaint on 7 December 2021 which would have allowed us to verify them."*

I disagree with this statement. I repeat, in the present case the WQ was devalued for the reasons given in the PD. The PD, as quoted on pages 5 and 6 of this decision, also set out the reasons why ASFML ought reasonably to have been in a position to verify BW3 and process the remittance by December 2021. I do not consider that it has said anything in its comments that shows this conclusion and the reasons behind it are wrong.

Putting things right

I uphold Mr M's complaint and I conclude that he is due redress for financial loss and compensation for trouble and upset, both arising from the complaint.

I order ASFML to do as follows:

- Calculate the total interest that would accrue on the full amount remitted to Mr M's SIPP on 12 April 2022, at the rate of 8% simple per year between 15 December 2021 (when the funds should have been released to his SIPP) and 12 April 2022 (when the funds were eventually released to his SIPP). ['the redress amount']
- Pay the redress amount to Mr M to cover his financial loss caused by being deprived access to the remittance between the above dates.
- Make this payment to Mr M within 28 days of receiving notice of his acceptance of

this decision. If ASFML does not make the payment to him within this period it must pay him the redress amount, and interest on the redress amount at the rate of 8% simple per year from the date of this decision up to the date redress is settled and paid to him. This is to compensate him for any undue settlement delay by ASFML.

- Pay Mr M £200 for the trouble and upset the complaint matter has caused him.

My final decision

For the reasons given above, I uphold Mr M's complaint. I order Aberdeen Standard Fund Managers Limited to calculate and pay him redress and compensation as set out above, and to provide him with its calculations in a clear and simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 21 August 2023.

Roy Kuku
Ombudsman