

The complaint

Mr P says SOVEREIGN PENSION SERVICES (UK) LIMITED ('Sovereign') delayed the transfer (to Westerby) of his Self-Invested Personal Pension ('SIPP') he requested in June 2021, that the transfer was not completed until March 2023, and that the delay caused him financial loss, costs and trouble and inconvenience that he seeks compensation for.

He also says an illiquid asset and a cash holding remain in the Sovereign SIPP, that he wants a resolution to the former, remittance of the latter and closure of the SIPP.

What happened

The Sovereign SIPP contained cash (a total of around £210,000), a holding in the Sussex Place Ventures/Regents Park Partners II fund (the 'SPV fund') and other investments held on the Interactive Investor ('II') platform. In addition, the SIPP contained an illiquid suspended investment held on the Investec platform (the 'Investec holding'), which could not be transferred and was not part of the transfer.

Mr P requested an *in-specie* transfer of the SIPP to Westerby. The chronology of key events is as follows:

- In May 2021 he sent an enquiry to Sovereign about investing in the Rainmaking Venture Studios ('RVS') Convertible Loan Note through the SIPP. It transpired that this was not possible, so Mr P decided to transfer his SIPP to Westerby, where the RVS investment could be made, and he initiated this the following month.
- On 12 July 2021 Westerby confirmed it had posted the discharge form to Sovereign and had request transfer of the Sovereign SIPP's cash element. On 30 July 2021 Mr P sent Sovereign an email giving formal instruction to transfer all cash in the SIPP (except around £3,000 that had to remain in the SIPP in connection with the Investec holding). He stressed the time sensitive investment opportunity he needed the cash for. On 3 August 2021 Sovereign confirmed remittance of the cash was in motion.
- On 4 August 2021 Westerby contacted the SPV fund to make enquiries about it. The SPV fund sent Westerby the requested information on 6 August 2021. Also on this date, Westerby says it sent Sovereign an asset transfer form for the II platform account to complete (and that it re-sent this on 14 September).
- On 23 August 2021 Westerby confirmed that a new II platform account had been set up for Mr P's Westerby SIPP, and on 27 August 2021 it confirmed receipt of transferred cash (a total of £114,124.12).
- On 14 September 2021 Westerby confirmed its approval of the SPV fund. It also said it had contacted both the SPV fund and Sovereign to obtain necessary documentation for the transfer of Mr P's holding, but it was yet to hear from either. On 20 September 2021 Westerby chased Sovereign for the completed II form.
- On 8 October 2021 Westerby chased Sovereign again for the completed II asset

transfer form and referred to its previous communications on the matter. On 14 October 2021 Westerby asked Mr P to sign a Deed of Adherence related to transfer of the SPV fund holding and gave notice that he would also need to countersign a Deed of Assignment (once returned by Sovereign) for the purpose of re-registering the holding (as part of the transfer). It sent the Deed of Assignment to Sovereign, for its action, on the same date. On 21 October 2021 Westerby updated Mr P to say it had not received the original Deed of Assignment it sent Sovereign and it asked if he had returned the Deed of Adherence's signature section.

- By the beginning of January 2022, the II form and Deed of Assignment remained outstanding from Sovereign. Westerby had been chasing for these documents. It chased further on 6 January 2022 but the delays continued. Transfer of the II assets was eventually completed on 7 April 2022, but there were further delays to the SPV fund holding transfer. During the delay the holding received a dividend distribution. Mr P wrote to the SPV fund (and Westerby) on 29 April 2022 giving an update on his effort to get Sovereign to address its ongoing delays (he had complained to Sovereign about this on the same date). He also instructed that the SPV fund should hold the distribution until the SIPP transfer was resolved, and then send the distribution to his Westerby SIPP thereafter.
- Sovereign identified a liability related issue with the Deed of Assignment that it was unsure about and sought to resolve. Mr P complained to it again, about the ongoing delays, on 25 May 2022. In June 2022 he referred the matter to our service. On 9 August 2022 Sovereign said it had revised the Deed of Assignment to include a limitation of liability clause, and it asked if this was acceptable to the SPV fund.
- By 9 August 2022 the remainder cash transfer (of £96,560) – cash from the II account – had eventually been completed and received in the Westerby SIPP.
- On 9 September 2022 Sovereign signed the Deed of Assignment and forwarded it to Mr P for his countersignature. On 14 September 2022 the SPV fund asked for his instruction on when to remit the withheld distribution. Sovereign has verified, to us, that the SPV fund holding was eventually transferred to Westerby on 12 October 2022.
- On 16 March 2023, Sovereign confirmed completion of the transfer process.

One of our investigators worked extensively with Mr P and with Sovereign towards a resolution of the case. She upheld the complaint, and there was also a concession by Sovereign of its responsibility for delays in the transfer process. Based on the undisputed delays it caused and the events associated with the transfer, focus rested on determining how redress for any resulting financial loss should be calculated for Mr P. This involved consideration of the distinct compensation claims he had made and of Sovereign's comments and responses to those claims. Overall, the investigator's compensation and redress recommendations were:

- Payment of £750 should be made to Mr P for the distress and inconvenience caused to him by the delayed transfer. Sovereign agreed with this. Mr P considered it insufficient and referred to details of the considerable time, effort and commitment he had to invest into the transfer matter, over a long period of time and to the detriment of other aspects of his professional activities and personal life. He also sought a penalty against Sovereign for its mishandling of the affair. The investigator reflected these points in her views and communications, but she explained our approach to compensation for distress and inconvenience – leading to the amount she had

recommended – and she explained that it is beyond our powers to issue punitive awards in cases.

- There was no loss in the SPV fund holding transferred in specie, so she found that no redress applies in this respect. Mr P was able to make the RVS investment in time, so she found that there was also no loss in that respect.
- Compensation is due for financial loss arising from the delay caused to Mr P's investment of the SPV fund's dividend distribution (a total of £13,750). The investigator was persuaded by his evidence that he would have used the distribution to invest in Constellation Software Inc ('CSI') so she recommended use of this as the benchmark for calculating loss between when the distribution was made and could have been invested (but for the delay), and when the holding was eventually transferred.
- The investigator set out her calculation of a total of 19 weeks and three days in delays caused to the transfer of the II assets and said, but for those delays, the transfer should have been completed by 24 November 2021. She was persuaded by Mr P's evidence that had the transfer been completed in a timely fashion he would have liquidated the assets and reinvested the proceeds in a way that duplicated investments made in his Individual Savings Account ('ISA'). She said the relevant ISA investments should be used as the benchmark for calculating loss between 24 November 2021 (when the II assets should have been transferred) and 8 April 2022 (when Mr P had access to those assets after their transfer was completed (on 7 April 2022)).
- The investigator said the same benchmark should be used in considering whether (or not) there is a loss arising from the delayed II cash transfer.

The investigator did not uphold Mr P's claim for a refund of legal fees that had been passed to him by the SPV fund arising from them instructing lawyers to assist in his holding's transfer. He said this cost had resulted from Sovereign's delays, but she said she needed evidence that the fees were directly related to the delays, as opposed to fees that arose naturally as part of the process to transfer the asset. He was unable to provide such evidence, so she was unable to recommend the compensation he sought.

The investigator conveyed, to Sovereign, Mr P's request for a formal apology. Sovereign agreed that such an apology will be issued once the complaint is concluded.

She did the same with regards to his concern about the Investec holding and the associated cash retained in the Sovereign SIPP, and with regards to his desire to close the Sovereign SIPP once and for all. Sovereign initially said retention of the cash (which continued to earn interest) was needed for the administration of the SIPP, given that it remained opened because of the untransferable suspended Investec holding within it. Subsequently and most recently it appears to have applied discretion to the matter. It confirmed to us that it will remit the cash to Mr P's Westerby SIPP and will contact Westerby for this purpose.

However, it maintains that the position on the Investec holding remains as it previously stated – it cannot be transferred, it remains in the Sovereign SIPP, Mr P cannot remove his interest in the holding and once the relevant fund is either wound up or becomes tradeable again it will contact Westerby to check if it can receive a final cash payment. It also said it is considering other options to help in the matter and that it will not be raising invoices during this period.

Also most recently, Sovereign completed and shared its calculations of redress based on the investigator's recommendations. They were then shared with Mr P.

Prior to this, it had questioned the reasoning behind some of the recommendations and made submissions against some of them, including submissions about what it considered to be gaps in the evidence of loss claimed by Mr P and in the evidence of his mitigation of loss in the case. It did the same in response to some of the specific dates and calculation methods recommended by the investigator. However, in the course of its communications with us it also repeatedly referred to its wish to work with the investigator to achieve an outcome in Mr P's best interest. In this context and despite its past questions and submissions, it accepted all parts of the investigator's recommendations. The final calculations it produced reflected this, and presented mainly the following:

- Investment of SPV fund dividend distribution – calculation based on the transfer date of 16 March 2023; but for the delays the earliest the dividend could have been transferred was 29 April 2022; calculation result shows the dividend (£13,750) could buy 9.80 units of CSI on the former date and could have bought more, 10.89 units, on the latter date; so there is a loss caused by the delay, being the value of the difference – 1.09 units or £1,677.23.
- Reinvestment of transferred/liquidated II assets – calculations based on their total transfer value on 24 November 2021, on the ISA investments portfolio benchmark and on the notion that reinvestments which would have been made on 24 November 2021 became possible on 8 April 2022; calculations show that there would have been a net gain (of £3,974.82, or £4,278.12 if calculated on a notional value basis using the same total investment units for both dates) from reinvesting in the benchmark portfolio on the later date compared to reinvesting on the earlier date; so the delay did not cause a loss, but instead gains.
- Investment of cash (£114,124) transferred on 26 August 2021 – calculation based on 13 August 2021 being the earliest date on which the transfer should have been completed, and on the same ISA portfolio benchmark; calculation result shows a loss of £2,931.31.
- Investment of cash (£96,560) transferred on 8 August 2022 – calculation based on 14 April 2022 being the earliest date on which the transfer should have been completed, and on the same ISA portfolio benchmark; calculation result shows a net gain of £7,521.50.
- Overall, all calculations show that the delays led to Mr P benefiting from a net gain of between £6,887.78 and £7,191.08.

Mr P rejected this outcome and asked for an Ombudsman's decision. He said he wanted, as a minimum, complete resolution of the Investec holding and the cash remaining in the Sovereign SIPP (whereby the cash is remitted to him and the SIPP is closed); compensation for distress and inconvenience he has been caused; compensation for his financial losses; and an apology from Sovereign.

The matter was referred to an Ombudsman.

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.

There is a sizeable history to the complaint, as summarised above, and the same could reasonably be said about the complaints journey after its referral to us in June last year. However, due to the investigator's significant work, plus effort and co-operation from both parties, the complaint that has been referred to me is distilled and focused only on specific aspects of compensation and redress, and then the matters of the Investec holding, the cash in the Sovereign SIPP and its closure.

Between the investigator's findings and Sovereign's concessions, the matter of Sovereign's liability has been established and is undisputed, so I do not need to address it.

The Investec holding, the cash in the Sovereign SIPP and its closure

I address this issue first because it is relatively straightforward.

Sovereign has confirmed to us on record that it will be remitting the remaining cash in the Sovereign SIPP (somewhere around £3,000) to Mr P's Westerby SIPP. It has also confirmed that the cash has continued to earn interest, so there is no question of loss in that respect. This resolves his request for such payment.

It confirmed this to us quite recently, on 20 October 2023, and said it will contact Westerby to clarify that it could receive the cash and, if so, it would update Mr P accordingly. If this is yet to happen, I expect it will happen shortly, and if Westerby confirms it can accept the cash I have no reason to believe that Sovereign will not proceed to transfer it into Mr P's Westerby SIPP as it says it will. As I said in the previous section, Sovereign had initially referred to a need to retain the cash for administration of the SIPP, so it appears that its recent decision was discretionarily made in order to satisfy Mr P's request.

The matter of the Investec holding is beyond Sovereign's control. Whilst the underlying fund for the holding remains illiquid and suspended, the holding remains as it is within the Sovereign SIPP. It is not transferrable and available evidence is that Mr P cannot withdraw his interest in it, so it remains his asset. For this reason alone, the SIPP inevitably continues to exist. If the underlying fund becomes tradeable again or if it is wound up, Sovereign has undertaken to resolve the matter at such point. Until then and despite any exploration, on its part, of possible alternatives, there is nothing that it can reasonably be expected to do in the matter. As such, I do not find that it has to do anything more.

Compensation and Redress

Distress and Inconvenience Award

The ordeal Mr P experienced is clear to see in the chronology of events and in the correspondence that featured during those events. Overall, the process of transferring his cash and investment assets took around 15 months to completion, and the SIPP transfer process itself took around 20 months to formally be completed.

I acknowledge that not all of the time during these periods constituted undue and avoidable delays. The SIPP was/is a relatively high value asset with different components, and its transfer was always going to take some time, within reason. It is also not unusual for such transfers to incur some additional time reasonably needed to address complications that might arise. Nevertheless, the process should never have taken 15 to 20 months and Sovereign accepts this. It is also notable that, broadly speaking, there were avoidable delays around late 2021 and early 2022 related to transfer of the II account and then within the period of April to September 2022, concerning the SPV fund holding's transfer and

Sovereign's execution of the Deed of Assignment.

Like the investigator, I too have given due regard to the information Mr P has shared about the impacts of the delays upon him personally and professionally at the time. I do not doubt his account, I empathise with what he went through and I note his view that the award of £750 is insufficient. However, I consider it a fair award.

It is evident that, as he has expressed, a significant part of Mr P's case for the award relates to the notion of punishing Sovereign for its mismanagement of the transfer. Our awards for trouble, distress, upset and/or inconvenience do not extend to that. Penalties to firms are for the industry regulator's remit, and are beyond ours. Our awards exist to provide complainants with a monetary form of compensation reflecting, as much as we can, the impacts of trouble, distress, upset and/or inconvenience suffered as a result of a firm's wrongdoing(s) in a complaint. This means the focus is on the effects upon the complainant and means that the facts in a complaint are important. The assessment must also be reasonably balanced to determine a basis for making the award.

In Mr P's case, he definitely faced impacts from the transfer delays, but that stood in the following context – there was timely transfer of the cash he needed for the RVS investment, which he accepts was not delayed and which was the main prompt for his SIPP transfer request; his invested assets remained invested throughout the process, so it is unlikely that there were worries or concerns about them being out of the market in this respect; as I address further below, he appears to have had no urgent or immediate plans for the remainder transferred cash, so it is also unlikely that there were worries or concerns in terms of its reinvestment; there is evidence of meaningful and helpful assistance from a particular Sovereign employee throughout the affair, which he has highlighted to us; and there is evidence of meaningful assistance from Westerby during the process (especially from October 2021 onwards), as he has also highlighted to us. These aspects would not have erased the impacts he faced, but they would have softened those impacts.

The investigator referred to guidance we use which says an award “... *up to around £750 might be fair where the impact of a mistake has caused considerable distress, upset and worry – and/or significant inconvenience and disruption that needs a lot of extra effort to sort out. Typically, the impact lasts over many weeks or months...*”. Overall, and based on the facts, I am satisfied that Mr P's case for the award falls at this compensation level. It recognises the considerable distress he endured and the extra effort he was forced to make over months in order to resolve the delayed transfer. It also does this with a balance struck between what he endured and the wider context summarised above.

For all the above reasons, I endorse the award of £750 to Mr P for the trouble, distress and inconvenience the delayed transfer caused him.

Financial Loss

The elements relevant to considering financial loss in this case are as the investigator and Sovereign have addressed. Sovereign fully accepted the investigator's findings on compensation for financial loss and it presented the calculations I summarised in the previous section (above).

I endorse the findings that Mr P's complaint is upheld and that he is entitled to consideration of compensation for financial loss arising from the delayed SIPP transfer. However, the calculations show no financial loss. Instead, an overall net gain (across the SIPP) has resulted from the calculations, so Sovereign does not have to pay any compensation (for financial loss) to Mr P. I address each of the transfer elements, in terms of redress, as follows:

- *Cash (£114,124) transferred on 26 August 2021* – Sovereign’s calculation of redress for this element shows a loss. However, its calculation is unwarranted, because there is no ground to claim financial loss for this element. To Mr P’s credit, he has made clear that he does not pursue such a claim. Sovereign’s decision to conduct the calculation might have happened because it was unaware of, or had overlooked, this. This transfer was the cash that was received in reasonable time (in August 2021) to allow him to make the RVS investment. He has confirmed to us that there is no financial loss claimed in this respect because that investment was duly made using cash from the transfer. I agree. Therefore, there is no financial loss in this element and no basis for compensation.
- *Cash (£96,560) transferred on 8 August 2022* – Sovereign’s calculation of redress for this element shows a net gain, and I have not seen cause to say there are errors in the calculation. In other words, there is no financial loss to compensate for.

The calculation is based on the ISA portfolio benchmark nominated by Mr P, and accepted by both the investigator and Sovereign. It is also based on the assumption that, but for the delays, the cash would have been transferred in April 2022. This cash was from the II account and April 2022 was the month in which the account’s investments were transferred. It is therefore reasonable to conclude that the cash transfer, from the same account, should not have been unduly delayed thereafter, could have happened in the same month and should not have been delayed up to August 2022. This supports the use of a *start date* in April 2022 (or the use of 14 April 2022, a week after the II investments were transferred).

I have considered whether (or not) an earlier start date should apply. Should the II cash have been sent even earlier than April 2022 and earlier than II investments? An argument can be made for this. Depending on the circumstances, it is possible for cash elements in transfers to be sent earlier and/or quicker than investments because they are comparatively less complicated to process.

Even if it is found that the II cash should have been transferred earlier than April 2022 that does not automatically mean the redress calculation should start from the identified earlier date. Evidence of Mr P’s financial loss, of his mitigation of loss and the credibility of the ISA portfolio as a benchmark were all initially questioned by Sovereign. Reasonably so, in my view. A claim about financial loss should be substantiated, there is usually a need to address mitigation of loss (unless the circumstances of a case say otherwise) within such a claim, and a redress benchmark should be credible and relevant to a case.

There is evidence from Mr P confirming he had some difficulty in substantiating a claim for financial loss. He considered the matter hypothetical and could not be sure of what he would have done (in terms of investments) at the time, but for the delays. The RVS investment stands as an exception to this, because it was a definitive pursuit he had at the time.

Upon further consideration, he referred to duplication of the ISA portfolio as something he was likely to have done, but for the delays. I do not have grounds to disagree. However, as he acknowledges, this is hypothetical and the implication is that he did not have any definite plans at the time to invest the II cash. Therefore, there are no grounds to say he would have used the cash to duplicate the ISA portfolio earlier than April 2022, and no grounds to consider a loss of investment opportunity (using the II cash) prior to April 2022.

In terms of mitigation, Sovereign's initial question concerned the fact that the cash was not invested after its receipt in August 2022. I understand how this could be viewed as a failure to mitigate, but such a view should be balanced with the acknowledgement of investments being inherently time sensitive. Opportunities that Mr P might have used the cash for at an earlier date would not necessarily have remained available in or around August 2022. For this reason, and in the circumstances of his case, I am not quite persuaded that he failed to mitigate.

Overall, I am satisfied with the calculation and outcome of this element of redress.

- *The II investments transferred on 7/8 April 2022* – The investigator gave detailed treatment to the summing up of Sovereign's delays in this part of the SIPP transfer. The delays add to a total of 19 weeks and three days, and it is upon this total that she said, without the delays, the transfer should have been completed on 24 November 2021.

I have considered her calculation and the underlying facts, and I agree with her finding. Sovereign accepted the finding. It also accepted Mr P's hypothesis that he would have liquidated the investments and reinvested in a manner duplicating the ISA portfolio. It calculated redress using this benchmark and using 24 November 2021 as the calculation start date. As stated in the previous section (above), both calculations show net gains, and I have not seen cause to say there are errors within them, so there is no financial loss to compensate for.

- *The SPV fund holding was transferred in specie*. Mr P makes no claim about intending to liquidate it and reinvest the proceeds, and no claim for financial loss related to the holding – so there is no financial loss to compensate for.
- *The SPV fund holding's dividend distribution* – Sovereign accepted the investigator's terms for calculating redress for this element. It agreed to use the CSI fund as the calculation benchmark, which was Mr P's nomination. It used the start date of 29 April 2022 (assuming there were no delays) and it agreed to use 16 March 2023 (when the SIPP transfer was completed) as the end date.

As stated in the previous section (above), the calculation resulted in a loss of £1,677.23, and I have not seen cause to say there are errors in the calculation. However, given that this loss is significantly outweighed by the total net gains in the other aspects of the redress calculation, Sovereign said no compensation is due. I agree. Mr P's claim for compensation exists, as a whole, on the basis of the entire SIPP and its delayed transfer. Therefore, its components are not to be isolated, and it is reasonable to offset between gains and losses across the SIPP in the redress calculation.

Mr P has said that the dividend was not transferred into the SIPP until 16 May (not March) 2023, having been issued in April 2022. On balance, I do not consider that this should affect the calculation. The SIPP was completely transferred on 16 March 2023; available evidence is that the SPV fund holding had been transferred even earlier, in October 2022; the dividend transfer was outside Sovereign's process; the dividend was held by the SPV fund, upon Mr P's request in April 2022, and the fund sent it to Westerby when it was instructed to do so; overall and for these reasons, any delay between 16 March and 16 May 2023 had nothing to do with Sovereign. Furthermore, the calculation start date of 29 April 2022 matches the dividend payment in April 2022.

The above analysis leads to the inevitable consideration of whether (or not)

Sovereign should have any liability for compensation in this element. It was Mr P's choice to leave the dividend payment with the SPV fund until the SIPP transfer was completed, and it was left there even after the SPV fund holding had been transferred to the Westerby SIPP.

He has explained that it seemed illogical to have it sent to the holding in the Sovereign SIPP at a time when he was transferring that holding (and the SIPP) to the Westerby SIPP. I understand this point, but I have not seen evidence to explain why it remained with the fund even after the holding had been transferred to the Westerby SIPP.

Arguments could be made that he failed to mitigate in these circumstances by not having the dividend invested as soon as it was available or by not having it moved to Westerby and invested once the SPV fund holding had been transferred; and that, for such reasons, no compensation should be due. However, I am not minded to address this. Even if findings were made upholding these arguments, they will not alter the outcome of the redress consideration in the complaint – that there has been no financial loss arising from the delayed SIPP transfer.

Putting things right

For the reasons given above my conclusions are that –

- Mr P's complaint is upheld.
- Sovereign must pay Mr P £750 for the trouble, distress and inconvenience the delayed SIPP transfer caused him.
- Mr P is also entitled to the consideration of compensation for financial loss. That consideration has been duly completed and the resulting calculations show that, overall, he incurred no financial loss as a result of the delayed SIPP transfer, so no compensation is due in this respect.

In the event that relevant and fact based grounds subsequently emerge to show, conclusively, errors in Sovereign's calculations, and are brought to Sovereign's attention, I order Sovereign to accurately recalculate the following heads of compensation on the same basis and methods stated and endorsed above – "*Cash (£96,560) transferred on 8 August 2022*", "*The 11 investments transferred on 7/8 April 2022*", and "*The SPV fund holding's dividend distribution*"; to calculate the overall net outcome of all the calculations; and if there is a net loss, to pay the net loss to Mr P without undue delay.

Mr P has requested a formal apology from Sovereign, and Sovereign has confirmed it will issue that apology after his complaint is concluded. I expect that Sovereign will do as it has stated, and I have no cause to consider otherwise.

My final decision

I uphold Mr P's complaint and I order SOVEREIGN PENSION SERVICES (UK) LIMITED to pay him £750 for the distress and inconvenience he has been caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 4 December 2023.

Roy Kuku
Ombudsman