

The complaint

Mr M complains that Interactive Investor Services Limited (II) failed to implement his Pension Sharing Order (PSO) within the four-month timeframe set out by the Financial Conduct Authority (FCA). He also complains that he's lost out on investment return within his Self-Invested Personal Pension (SIPP) due to II's advice in December 2022 to leave the portfolio alone as the transfer was imminent.

Mr M has also complained to this service about fees that II charged. My decision here will not cover that complaint.

What happened

Mr M opened his SIPP with II in September 2019.

A PSO dated 23 November 2021 specified that Mr M's pension with II should be split 50/50 with his ex-wife.

II said that it received all the information needed to implement the PSO on 21 September 2022. It sent Mr M a secure message on 4 October 2022 which explained that although it'd received the information needed, it couldn't proceed with the PSO until both Mr M and his ex-wife had confirmed they agreed with the valuation. It said that 50% of the fund at the valuation date was £389,017.32. And explained that it'd based the valuation date on the date it'd received all the paperwork, which was 21 September 2022. It also said that Mr M would need to complete the sale of his stock so that the proceeds were available.

II confirmed to Mr M that it was standard practice to provide the valuation for the date that all the paperwork had been received. It also said it would try to work with Mr M's ex-wife's provider to agree to a stock and cash rather than just a cash transfer. It also confirmed that there would be no charges for the implementation of the PSO.

Mr M wasn't happy with II's approach. He felt that at current market valuations he'd lose around £13,000 if he had to make the stock available in cash.

II called Mr M to discuss the PSO on 5 October 2022. Mr M still felt II's processes were unfair, as he felt there was no provision in the PSO for II to backdate the value to 21 September 2022. He didn't want to be disadvantaged as a result of changing stock values. Mr M also said that it was up to II to implement the PSO. Mr M said that II had agreed to his request for an in specie transfer. But had then told him he needed to make the cash available.

II sent Mr M a secure message on 6 October 2022 as it wanted to speak to both him and his ex-wife to agree a valuation date and to confirm whether the transfer would be a cash and stock transfer, or cash only. Mr M replied to tell II he was happy with an in specie transfer at a set date. II then tried to contact Mr M's ex-wife by email and letter. And on 26 October 2022, Mr M's ex-wife's financial adviser called II about the PSO. II provided generic information and told the adviser that it needed to speak with Mr M's ex-wife directly about the PSO. I understand that II eventually spoke to Mr M's ex-wife on 12 December 2022. And that

she agreed to both the valuation and for the transfer to go ahead as cash and stock. II then sent Mr M a secure message on 13 December 2022 to tell him what his ex-wife had agreed to.

Mr M felt that the transfer should take place that day. He asked II to tell him if the transfer wasn't going to be executed before the end of the week. He also said that there was still an outstanding issue about the charges on his account.

II sent Mr M a secure message on 15 December 2022 to tell him that it'd sent the asset valuation to Mr M's ex-wife's pension provider and that it would be chasing it for acceptance.

I understand that acceptance from Mr M's ex-wife's provider was due on 22 December 2022. But on 21 December 2022, Mr M called II to complain about how long the transfer was taking. II told him it expected Mr M's ex-wife's provider to confirm its acceptance of the transfer the following day.

Mr M contacted II on 22 December 2022 to tell it that he disagreed with the cash part of the valuation as he felt it wasn't correct. He felt II had incorrectly taken fees from his ISA rather than his SIPP. The same day, Mr M's ex-wife's provider told II that it was expecting a cash transfer, not in specie. II felt that it had the authority to do the transfer in specie. It told Mr M what'd happened the same day.

On 23 December 2022, Mr M told II that he didn't agree to the PSO being implemented at the current valuation. And on 30 December 2022, II confirmed to Mr M that its valuation was correct. And said he needed to confirm he was happy to proceed with the transfer. Mr M still felt the cash value wasn't correct due to outstanding fees. He told II that he only wanted the transfer to proceed once the cash value had been corrected. II then put the transfer on hold until it knew the outcome of the fee query.

II sent Mr M a secure message on 3 January 2023 to tell him that the fee issue would be reviewed as part of his Financial Ombudsman Service complaint. And that unless this service found in his favour, the current value stood. II followed up the next day when Mr M said he was unclear about whether the transfer was proceeding. It told him it would need his confirmation and agreement to the valuation in order to proceed with the transfer. Mr M said he didn't agree to the valuation.

II sent Mr M a secure message on 27 January 2023 and on 3 February 2023 to ask him if he was willing to accept the valuation and proceed with the PSO. Mr M replied on 6 February 2023 to tell II that he didn't accept the valuation of the cash part of the transfer. He also said he was concerned that the PSO wouldn't be completed within the four-month timeframe.

II wrote to Mr M again on 14 February 2023 to tell him it was bound by the PSO and that it couldn't deviate from the valuation it'd sent. It asked Mr M if he could reach an agreement with his ex-wife about the fees.

Mr M contacted II on 1 March 2023 as he was still concerned the PSO wasn't being implemented within the required timeframe. And he still felt that the cash part of the transfer wasn't correct as he felt II hadn't charged the fees to his SIPP account. He wanted II to correct the valuation and implement the PSO. II replied the following day to tell Mr M that this service had found that it'd charged fees in line with its terms and conditions.

II again asked Mr M if he wanted to proceed with the PSO on 13 March 2023. Mr M replied the following day to tell it he still didn't agree to the cash part of the valuation. And that II needed to first address the issues with the fees.

II wrote to Mr M on 23 March 2023 to tell him it couldn't move the fees to the SIPP. But it could refund £120 of fees. Mr M accepted the offer of the £120 refund on 6 April 2023. He also told II that it'd failed to implement the PSO within the required timeframe.

On 11 April 2023, II asked Mr M if he was now happy to proceed with the transfer. Mr M replied on 26 April 2023. He said it was II's responsibility to implement the PSO. And noted that: "*Implementation of the Court Order is not conditional on my happiness, agreement or permission*". Mr M also told II that the issue was having a negative impact on his health and his ability to manage his account.

Mr M complained to II on 12 May 2023. He said it'd received all the information needed to implement the PSO on 21 September 2022. But that it'd failed to do this within the four-month time limit set out by the FCA. Mr M said that this failure was materially impacting his ability to manage his pension account, as he'd been given a number of methods about how the PSO would be implemented. He also said it was causing him emotional distress, as it was preventing him from moving on from his divorce, and was affecting his mental health. He asked for the PSO to be implemented immediately.

This service issued its final decision on Mr M's complaint about fees in June 2023.

II sent Mr M a secure message on 12 July 2023 to tell him that his ex-wife's broker had said it could only accept a cash transfer. It said Mr M didn't have the cash available. And told him that he'd need to sell a stock value of £239,571.34 to make the cash transfer amount of £389,017.32 available. Mr M asked for the legal basis for the broker changing its mind after previously agreeing to in specie.

Mr M referred his complaint to this service on 13 July 2023, as he hadn't yet received a response to his complaint. He wanted II to implement the PSO. And to compensate him for the financial losses he'd suffered due to not being able to manage his pension account properly given the lack of clarity about the transfer. He also wanted compensation for the distress and inconvenience it'd caused.

On 17 July 2023, after a further exchange of messages, II told Mr M that the PSO didn't stipulate how the stated percentage needed to be transferred to his ex-wife. Nor did it state that the recipient couldn't change her mind. It asked Mr M to arrange for the cash to be available so it could complete the transfer.

II issued its final response to the complaint on 1 September 2023. It didn't think it'd failed to implement the PSO in time. It said that the four-month implementation period for the PSO only started once it'd received all necessary documents, as detailed in the PSO, and payment of all outstanding charges it'd requested. It also said that it'd asked Mr M to sell sufficient stock to meet the indicated value so that it could complete the cash transfer under the PSO.

II said that the implementation period would therefore only start once all account fees and any trade commission due had been settled. It said Mr M would be given a new valuation date once half of his portfolio was available in cash. But that this meant that the original valuation date of 21 September 2022 was null and void. II also said that once Mr M had made the cash it'd requested available, it would be able to implement the PSO within the four-month timeframe.

II partly upheld Mr M's complaint as it acknowledged it hadn't sent the £120 fee refund it'd offered in April 2023, and it'd taken longer than it should've to issue its final response letter. It paid Mr M £150 compensation for this.

Mr M didn't agree with II. He felt that it wouldn't have started the in specie transfer in December 2022 if it hadn't already been in the implementation period. He also didn't think he'd delayed the process by disagreeing with the valuation. He felt his objections to the valuation were legitimate. And didn't agree with II's use of closing mid-prices for the valuation of the assets.

Mr M said he wanted to be compensated for the lack of growth in his pension portfolio between December 2022 and September 2023 due the II's advice in December 2022 to leave the portfolio alone as the transfer was imminent. He also wanted compensation for the distress and inconvenience the issue had caused him.

II told this service that it only offered a self-managed execution only service, so it didn't sell client assets unless absolutely necessary and as detailed in the terms. Instead, all investment/disinvestment decisions had to be completed by the client.

II felt that the main reason for the delay to the implementation of the PSO was Mr M's failure to agree to the valuation provided and to make available the required funds to progress further. It said these delays were outside of its control. II also said that its role was clear – it should facilitate the transfer of funds, once Mr M had made them available, at the rate set on the PSO. But it said it couldn't do this until Mr M took action.

On 29 September 2023, II again asked Mr M to make funds available so it could implement the PSO. Mr M replied the same day to tell II that he felt it was its responsibility to implement the PSO. II replied on 2 October 2023 to tell Mr M again that it couldn't sell any assets on his behalf and that he as the account holder needed to make the cash available. It said it could proceed with the transfer as soon as this happened. Mr M replied stating that he was unclear about why II couldn't sell assets on his behalf. He asked for an explanation.

Mr M chased for the explanation he'd requested on 9 October 2023. II replied the following day to tell him it'd referred his query to its technical specialist for review.

II wrote to Mr M again in October 2023 to tell him that his ex-wife had now requested an in specie transfer. It confirmed that no shares had been sold. And said that once it'd received further transfer forms from Mr M's ex-wife's broker it would be in touch.

II followed up on 31 October 2023 to tell Mr M that it'd now received a transfer request from his ex-wife and that it could proceed with the PSO as an in specie transfer. It said the valuation date was 23 October 2023, when it'd received the valid transfer paperwork. And provided Mr M with full details of the assets that would be transferred. This included cash of £76,104.92 and USD 2,622.49. II also confirmed that there was no action for Mr M.

On 27 November 2023, a total of £374,464.51 was transferred to Mr M's ex-wife's pension. This was made up of £296,255.64 in specie asset transfer and £78,208.87 residual cash.

Our investigator didn't feel that the complaint should be upheld. He felt that II's choice of the valuation date had been fair and in line with its usual process and with standard practice generally. He didn't think that II could be fairly held responsible for the transfer delays as he felt they were outside of its control. And although he agreed with Mr M that it was II's responsibility to implement the PSO, he felt it also had a responsibility to do so with Mr M's consent and agreement on the amounts being transferred.

Our investigator also felt that once II had been told that Mr M's ex-wife's provider would accept an in specie transfer, the division of assets and the fund transfer had been completed in a timely manner.

Mr M didn't agree with our investigator. He made the following points:

- the only test of whether the PSO had been completed within the statutory timeframe should be based on the start date of the implementation period, the duration of the implementation period and the actual date the PSO was completed. If II really couldn't implement the PSO in that time it should've applied to the court that the PSO was improperly construed. Mr M felt that a PSO shouldn't take the four-month timeframe allowed. He said that as financial markets fluctuate on a daily basis, II should've valued the assets, then hived them off so it could execute the transfer on the same date. If it'd done this, he felt the aim of the PSO would've been better met, without the risk of adverse financial movements for him. He didn't think the current process was fair.
- Mr M felt that the implementation of the PSO shouldn't have deprived him of his ability to manage his pension account or benefit from increases in asset values. He felt that his pension had been "stuck" in a defensive posture between December 2022 and November 2023 under II's instructions whilst it implemented the PSO.
- Mr M felt that the valuation that II used for the PSO was objectively flawed as it was based on the average of the buy price and sell price on market close. He felt that as he already held the assets the correct basis for the valuation was the sell price only. And that there was no point in II asking for his agreement to the valuation if his legitimate objections were going to be ignored. Mr M also felt that II had, in the end, implemented the PSO without his agreement. He said it had sold US dollar assets without his consent. So he felt this rendered its argument about needing his agreement spurious.
- Mr M said that at no point after informing him that the transfer had started in December 2022 did II inform him that it had been stopped, paused or postponed.
- He also said that he'd incurred additional solicitor's fees of £1,452 due to the delays in implementing the PSO.

As agreement couldn't be reached, the complaint has come to me for a review.

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'm not going to uphold it. I know this will be disappointing for Mr M. I'll explain the reasons for my decision.

Mr M has submitted a great deal of information to this service and clearly feels strongly about his complaint. While I've considered all of his points, my response will focus on the key aspects of his complaint.

The heart of this complaint is a fundamental disagreement between Mr M and II about when and how a PSO should be implemented. So I first considered what the court order required II to do and when it required it to do it.

The court order

The court order stated under a note that:

“Until the information requested in A. B, (and as far as applicable G, H, I and J) is provided the pension sharing order cannot be implemented although it may be made. Even if all the information requested has been provided, further information may be required before implementation can begin...”

It also stated (relevant points only):

“To the person responsible for the pension arrangement:

Take notice that you must discharge your liability within the period of 4 months beginning with the later of:

- the day on which this order takes effect; or*
- the first day on which you are in receipt of -*

...

d. the information specified in paragraphs A, B and C of this annex and, where applicable, paragraphs G to J of this annex; and

e. payment of all outstanding charges requested by the pension scheme.”

It is effectively *“the person responsible for the pension arrangement”* here.

I then considered whether Mr M delayed the process when he wouldn't agree to the valuation.

Did Mr M delay the process?

Mr M doesn't consider that he delayed the processing of the PSO by disagreeing with the valuation. He felt he had a legitimate reason to disagree with II's use of closing mid-prices for the valuation of the assets. He also had an outstanding issue about where fees were being taken from. Mr M felt that the valuation II should've used for the PSO should've only been based on the sell price.

II said that it used official mid closing prices, not liquidation prices, because sale prices move consistently throughout the day. It also said that the choice of valuation day didn't itself cause financial disadvantage. Instead, it felt normal market movements caused such impact. And these were outside of its control.

II also said that it didn't have a process for customers to challenge the valuation day because if it did, customers could choose their own valuation date and it would then be at risk of receiving multiple requests to change the valuation when the market moved. However, the evidence shows that II confirmed to Mr M on 30 December 2022 that the valuation was correct.

I acknowledge that Mr M's position is that there is no provision in the PSO requiring both parties to agree the valuation. And that his other pension provider didn't require this.

But I also note that II's process means that it requires both parties to agree to the valuation before it can proceed. And there's nothing in the PSO to preclude this. Neither is there any reason to consider that asking for agreement is such an onerous and time-consuming step that it would risk the PSO not being implemented in time. Therefore I don't consider that II acted unfairly or unreasonably when it followed its normal process.

Mr M had every right to disagree with II's valuation and to question it about its fees. But, from what I've seen, it was he who told II at the end of December 2022 that he only wanted the transfer to proceed once the outcome of the fee query was known.

Therefore, although I acknowledge that he had legitimate reasons for requesting the process be paused, I'm satisfied that it was Mr M who stopped the PSO from taking place at the end of 2022.

I next considered when the implementation period should've started.

When should the implementation period have started?

Mr M said that this service should only assess whether the PSO was completed within the statutory four months by looking at the start date of the implementation period and the actual date the PSO was completed.

Mr M said that II confirmed on 4 October 2022 that it had received all of the necessary paperwork to implement the PSO on 21 September 2022. He felt that as it also confirmed that it wouldn't charge any fees for implementing the PSO, this meant that all of the requirements in the PSO had been met. Therefore he felt that II should've started to implement the PSO on 21 September 2022. And that as it hadn't completed that information within the four-month time limit set out by the FCA, II had failed to implement the PSO on time.

II said that the four-month implementation period for the PSO only started after it'd received all of the necessary documents, payment of all outstanding charges it'd requested, and when Mr M had made available enough cash to proceed with the transfer. Therefore it didn't agree that the implementation period should've started on 21 September 2022.

II said that once it had received the PSO on 21 September 2022, it provided Mr M with a valuation so he could make any required cash available. It said that it required both parties to the PSO to agree to the valuation. And that Mr M's ex-wife had done so on 12 December 2022. So at this point it initiated a transfer request to Mr M's ex-wife's provider to facilitate the PSO payment to her chosen destination. It said Mr M refused to accept the valuation. And raised a separate dispute about how his non-SIPP fees should be paid from his SIPP.

II felt that the delay in progressing the PSO was down to Mr M's failure to accept the valuation and not making the required cash available. And Mr M's ex-wife's failure to get in touch with it for nearly two months to confirm the valuation. It said these delays were outside of its control.

I can also see that Mr M considers that, as II used 21 September 2022 as the initial valuation date, this confirms that the four-month implementation period for the PSO started then. II said that it can determine a valuation date without involvement of either party. But that it prefers both parties to agree to it.

I agree that the four-month implementation period for the PSO might have started on 21 September 2022 but for other events. For example, Mr M's ex-wife's pension provider's confirmation to II that it needed a cash transfer rather than an in specie transfer. And Mr M's decision not to agree with the cash valuation II had proposed due to his ongoing issue with II about fees.

From what I've seen, II tried to speak with Mr M and his ex-wife as soon as it could after 6 October 2022 so that a valuation date could be agreed and to confirm what type of transfer would be accepted. But, because Mr M's wife didn't get in contact with it until 12 December

2022, it couldn't move the PSO forward until then. Although Mr M initially wanted the transfer to go ahead at this point, he told II on 23 December 2022 that he didn't agree to the PSO being implemented at this point, due to the current valuation and the fee issue he'd raised.

It was of course Mr M's right to disagree with the valuation and to raise fee issues with II. But I can't fairly and reasonably say that II should've implemented the PSO at this point despite Mr M's lack of agreement. I'm of the view that if it had done so, this would've led to a different complaint.

The evidence also shows that II confirmed that its valuation was correct and in line with its fee structure on 30 December 2022. And that it asked Mr M if he was now happy to proceed. But as he still felt that the cash value wasn't correct due to outstanding fees, he told II that he only wanted the transfer to proceed once the cash value had been corrected. So II put the PSO on hold, at Mr M's request, until the outcome of the fee query.

Therefore, although I acknowledge that Mr M said that II didn't tell him that it'd put the processing of the PSO on hold, I can't agree that he didn't know this was what had happened as he requested it himself. And in any event, it's clear from the evidence I've covered in the background to this decision that II did make it known that the transfer was on hold.

The outcome of Mr M's fee complaint was issued in June 2023. So the PSO process could resume. II wrote to Mr M twice in July 2023 to tell him that only a cash transfer was now acceptable to his ex-wife and that he didn't have the cash available. Therefore he'd need to sell stock worth £239,571.34. II also wrote to Mr M to make the same request on 29 September 2023. When Mr M didn't do what II had asked, II explained that it couldn't sell any assets on his behalf. And that he still needed to make the cash available. It was also clear that it couldn't proceed with the transfer until this happened.

I appreciate that Mr M feels that there's no obligation on him under the PSO. And while I agree that it doesn't specify any actions for him, I don't agree that this means he shouldn't have been required to get involved. Therefore I don't think it was unreasonable for II to require him to choose which of his stocks he wanted to sell down to cash. I say this because I agree with II that if it'd chosen which of his stocks to encash, he may not have agreed with its choices.

Following another change from Mr M's ex-wife, II wrote to Mr M again in October 2023 to tell him that she'd now requested an in specie transfer. And on 31 October 2023, II told Mr M that it could proceed with the PSO as an in specie transfer with a valuation date of 23 October 2023 once it'd received valid transfer paperwork. At this point, II provided Mr M with full details of the assets that would be transferred. This included cash of £76,104.92 and USD 2,622.49. And said there was no action for Mr M. The transfer finally completed on 27 November 2023.

From what I've seen, II was only in a position to process the PSO once Mr M's ex-wife requested an in specie transfer. Between July and the start of October 2023, Mr M hadn't sold the assets II had asked him to sell to cash. So it hadn't been possible to progress the PSO. But as soon as Mr M's ex-wife said she wanted an in specie transfer in October 2023, all of II's requirements for the PSO were met. The transfer was completed just over a month later, thus meeting the requirements of the PSO.

Having considered all of the evidence, I can't fairly agree with Mr M that the PSO was completed outside of the statutory four months.

I next considered Mr M's complaint that the delayed processing of the PSO impacted his

ability to manage his pension account.

Did II's advice restrict Mr M's investments?

Mr M said he wanted to be compensated for the lack of growth in his pension portfolio between December 2022 and September 2023 as he felt II had advised him in December 2022 to leave the portfolio alone as the transfer was imminent.

Having listened to the call between II and Mr M in which he said II advised him, I can't reasonably agree that it told him to leave his stock alone.

I say this because during that call, which Mr M made as he wanted to complain about how long the transfer was taking, II confirmed that Mr M's ex-wife's provider was expected to confirm its acceptance of the transfer the following day. Therefore I consider that II simply noted to Mr M that, as half of his funds were expected to be transferred in the near future, any changes may cause further delays. I'm satisfied that this was a reasonable statement to make under the circumstances. And I don't agree that this amounted to II restricting Mr M's investment options.

I also say this because II has confirmed that Mr M retained access to the management of his entire portfolio over the period in question. So it was up to him to decide what investment choices he wanted to make.

I acknowledge Mr M's point that there were a number of changes to the transfer request from his ex-wife. But I've no evidence that II was responsible for any of these changed requests. Therefore I can't fairly agree that II's advice restricted Mr M's investments. And I don't uphold this part of the complaint.

I next considered Mr M's complaint that in the end, II implemented the PSO without his agreement. He said it had sold US dollar assets without his consent.

Did II implement the PSO incorrectly?

Mr M said that his transaction statement showed that II liquidated 2,622.49 US dollars on 8 November 2023 so that it could effect the pension share in GB pounds. He said he hadn't given his permission or consent for this transaction. And felt that this proved that II could in fact liquidate assets from his account without his involvement.

II told this service that as it wasn't possible for US dollars to be transferred between SIPP accounts, it had to carry out a conversion to comply with the underlying order. It said that Mr M had previously confirmed he was happy to proceed with an in specie transfer, so it hadn't needed to get his consent again.

II said that it wouldn't liquidate assets on Mr M's behalf to enact the PSO for a cash transfer. It said this was because it was his responsibility and its terms didn't allow it. It also said that if Mr M's currency had been in GB pounds it wouldn't have needed a conversion.

From what I've seen, II did nothing wrong here. It had the consent it needed from Mr M to make the US dollar conversion. Therefore I don't agree that II implemented the PSO without his consent. And I don't uphold this part of the complaint.

In summary, I haven't found that II did anything wrong. I don't uphold the complaint. And, although I appreciate that this process has caused Mr M considerable distress, I can't fairly consider awarding him any compensation without finding that II did something wrong. I also can't reasonably ask II to cover Mr M's solicitor's fees.

My final decision

For the reasons I've set out, I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 13 March 2024.

Jo Occleshaw
Ombudsman