

## The complaint

Mr O complains that due to delays caused by Policy Services Limited (PSL) to a transfer of benefits from his occupational pension scheme, he missed out on a guaranteed transfer value which subsequently dropped. To resolve things Mr O would like PSL to put him in the position he should've been had the delays not taken place, and compensate him for the distress caused.

## What happened

Mr O had already transferred his former employer's defined benefit pension to his James Hay SIPP. However, he had also retained benefits in that employer's subsequent pension scheme which operated partly on a 'cash balance' basis and partly on a fully 'defined contribution' basis. The difference between those two segments was as follows:

- A Credit Account provided a guaranteed amount of fund (known as a cash balance arrangement) based on Mr O's length of service. This didn't guarantee the amount of pension this would produce, which would be dependent on annuity rates.
- An Investment Account received further contributions from Mr O and his former employer, which were invested on a defined contribution basis to generate a value at retirement dependent on the performance of the assets invested in.

Mr O then spoke to his regular adviser Mr D (who was a Partner – i.e. appointed representative – of St James's Place (SJP) about transferring the rest of the employer's pension to the same SIPP. SJP provides what's known as 'restricted' advice – it can only advise on its own products. So it has an arrangement with PSL for it to refer clients to PSL to get advice on the rest of the market.

I'm aware that Mr O first floated the idea of this transfer with Mr D late in 2021. But as our investigator has explained, SJP is separately authorised by the industry regulator, the Financial Conduct Authority (FCA). This complaint is against PSL, so in the summary of the key events which follows I've focused on those relevant to PSL's involvement. I've continued to mention the interactions Mr O had with Mr D after PSL became involved, for reasons which will become clear in this decision.

**11 March 2022:** Mr O obtained a statement of his 'total account value' in the pension scheme of £276,327. Although he's referred to this being guaranteed for six months, no evidence of this has been provided – only a sheet saying that:

*"This statement shows the value of your Credit Account and Investment Account If you leave your deferred benefits in the [scheme]...The value of your Credit Account is only payable in full at your NRD [normal retirement date]. If you take your benefits before your NRD, your Credit Account will be adjusted (usually reduced) for early payment."*

Evidently, this is not a transfer value but a statement of ongoing investment value, and contains no guarantees on the amount available for transfer. The Credit Account was valued at £205,059 and the Investment Account was £71,268.

**18 March:** Mr O emailed this statement to Mr D (the SJP Partner).

**28 March:** Mr D sent an initial email to PSL. He also queried with Mr O if he was still contributing to the scheme, and the following day requested some further information from that scheme.

**4 April:** Mr O obtained an updated transfer value for his benefits in order for PSL to give advice. He sent this to Mr D the next day. The transfer value of the Credit Account (guaranteed for three months until 4 July 2022) was £236,435, and of the Investment Account (not guaranteed but dependent on investment performance) £71,665. This quote came under cover of a letter which reads:

*"Please note that the [scheme] will provide one quotation in any 12 month period. If you require further transfer quotations, these should be obtained from [the member's online pension administration service] where multiple quotations can be generated and are available immediately. You can either print or save these to then send to your Financial Adviser or new pension arrangement.*

...

*We must be in receipt of all completed forms by 4 July 2022 to secure the guaranteed transfer value. If we receive the 'transfer agreement'...after 4 July 2022, the transfer value will be recalculated and it may be higher or lower than the value shown on the enclosed statement. If your revised guaranteed transfer value is higher, or within 10% of the amount shown on the statement of entitlement, we will go ahead and pay the revised transfer value. Otherwise we will issue a new agreement form for you to complete.*

*We will issue a new quotation in all cases if the transfer documentation is received more than one month after the guarantee end date. Any additional quotations need to be obtained via our online pension administration service...as the [scheme] will only provide one quotation in any 12 month period.*

...

*The transfer value in respect of your Credit Account shown on the enclosed statement of entitlement to a guaranteed cash equivalent is guaranteed for 3 months from the date of the statement. The transfer value has been calculated using actuarial factors and assumptions which are subject to regular review and will change, as well as statutory factors which are also subject to change. If any of the factors change and you do not return the completed transfer agreement before the end of the guarantee period, the transfer value will be recalculated and may be higher or lower than that shown here. In addition, please note that the fund value of any defined contribution benefits shown in the statement will rise or fall, subject to market fluctuations."*

Mr O has told this service that he therefore regards **5 April** as the date PSL *"started to transfer over my pension"*.

Mr O has also said that following a conversation with the scheme in September 2022, he understood that it would have honoured this total transfer value of £308,100 for up to 6 months from 4 April 2022: *"Although [scheme] stated 4 July 2022, they do actually guarantee transfer values for a further 3 months after this date."* Again, no evidence has been provided to corroborate this. Even if the scheme had exercised discretion with Mr O's previous defined benefit transfer, that doesn't amount to a binding entitlement (and in any event some of the transfer value was on a defined contribution basis and was never guaranteed).

It's unclear precisely what PSL and/or Mr D were doing between this point and the next entry on the timeline. PSL's notes simply say *"admin dealing with LOA [letter of authority] to [scheme]"*. It has further clarified, *"In this case the initial delays were as a result of the admin team being unable to get clarity on servicing or initial information from [scheme] to allow us to get the client in the diary."*

**9 May:** Mr D confirmed to Mr O that he had sent data gathering information on to PSL.

Mr O's notes say: "[Mr D] confirms he's sent details on the form to include it which the data gathering and will come back to [Mr O]."

**24 May:** PSL notes receiving the initial transfer paperwork "via helpdesk".

**6 June:** Mr O chased Mr D for an update.

**9 June:** PSL sought technical guidance due to the unusual nature of Mr O's occupational scheme. PSL has said that it isn't able to provide advice on "defined benefit" schemes as these contain safeguarded benefits and require additional permissions from the FCA. My understanding (which I expect was confirmed in the guidance PSL obtained) is that Mr O's Credit Account wouldn't count as one of these arrangements: a cash balance arrangement doesn't amount to safeguarded benefits.

**10 June:** Discussions took place between PSL, Mr D and Mr O regarding fund selection and fees, the conclusion of which was that PSL could move forward with the transfer recommendations.

**14 June:** PSL warned Mr D that the next available appointment for transfer advice was 28 June, but they could be flexible due to the remaining guarantee period on Mr O's transfer value. However, they noted Mr D was having difficulty finalising an appointment with Mr O.

**21 June:** Mr D and Mr O arranged a call for **24 June** to discuss the way forward.

**22 June:** Mr D informed PSL of the forthcoming call. PSL reminded Mr D of the short timescale now in view of the guarantee period expiring. There appears to be some confusion at this point, as Mr D said Mr O believed the value was £276,000. This is the non-guaranteed quote of 11 March.

**27 June:** Mr D confirmed to PSL he had spoken to Mr O and made appointment for **4 July**.

**1 July:** PSL sent Mr O some documents in relation to performance and the risk strategy which he said would be discussed in the meeting.

**4 July:** PSL, Mr D and Mr O attended the meeting. They note the transfer value is now out of date and it would be prudent to get another. In an email after the meeting, PSL said that the transfer value was no longer guaranteed and would be confirmed by the scheme once the transfer paperwork was received.

PSL repeated the part of the explanation the scheme had provided in its covering letter (above), that if the transfer paperwork was received within one month of the guarantee expiring on 4 July then it would recalculate the transfer value. And it would either pay out (if the value was higher or within 10% of the amount originally quoted) or issue new forms to complete (if the transfer value had gone down by more than 10%). PSL didn't indicate what would happen if the paperwork was returned after this one month period.

**5 July:** Mr O responded confirming he was happy with this.

**18 July:** PSL sent its draft suitability report to a third-party compliance expert for review.

**29 July:** The report was passed to Mr D, who on **1 August** agreed to it being sent to Mr O.

**3 August:** The suitability report was given to Mr O and he signed agreeing with the advice the same day. It contained the following passages relevant to the complaint:

*“You provided us with a Transfer value which had a value date of 4th July 2022. I indicated to you that by the time the paperwork was sent to [scheme] that there was no guarantee that this would be the amount being transferred and you would, if needed, ask for another Transfer Value to be sure. You indicated that you are not concerned about the value changing dramatically as you advised that most of the plan was held in cash.”*

*“We agreed that if the transfer documents are received within one month of the value date then they will recalculate and if the value is higher or within 10% of the amount shown then they will go ahead and pay the transfer value. If the TV has gone down by more than 10% then they will issue a new agreement and form to complete to indicate agreement.”*

PSL has provided this service with the call recording confirming this was discussed and Mr O made the comments about his plan being held in cash.

**3 August:** An attempt to key the transfer in online was rejected by Mr O's SIPP provider James Hay, who required a 'transfer in' form to be completed.

**12 August:** PSL emailed Mr O asking for a transfer in form and adviser charging form to be completed with original signature. Mr O posted them the following day and PSL provided them to James Hay on **18 August**.

**22 August:** Mr O chased Mr D for an update. Mr D believed everything was submitted to James Hay and the scheme, and it was a case of waiting for the funds to be transferred.

**6 September:** James Hay advised a section of the transfer-in form was incomplete. The form was completed and resubmitted on the James Hay platform.

**14 September:** James Hay confirmed it had contacted the scheme to request the transfer.

**21 September:** Mr O chased Mr D, who said he would chase up PSL and feed back.

**22 September:** The scheme told PSL it was still awaiting its transfer of benefits form with the guaranteed transfer value quote. A copy was posted to Mr O to be signed and returned.

**27 September:** The transfer of benefits form was posted to James Hay for it to complete its part and forward to the scheme for processing. PSL updated the scheme on this by email.

**5 October:** The scheme advised the transfer of benefits form couldn't be accepted as it was more than a month outside the original guaranteed period. Mr O also spoke to the scheme to learn the same thing, and sent PSL a new transfer value quote he'd obtained online – expressing his disappointment as the amount of the quote was lower even than his 11 March 2022 'total account value' of £276,327.

PSL apologised for the delays and said it would work to ensure all the new forms were handled and passed through to all the relevant parties smoothly to make sure the transfer was completed as soon as possible. It noted regarding the fall in Mr O's transfer value that it would be investigating the implications this may have had in terms of growth in his James Hay SIPP which would be addressed separately. It added:

*“...I have investigated why these delays occurred and. I'm sorry but there appears to have been a number of reasons, none of which provide an adequate explanation. I would like to offer my sincere apologies for these errors and my assurance that once the transfer has completed, I will carry out a loss calculation to identify whether you have been detrimentally affected by the delays and of course, I appreciate that regardless of whether you have suffered any financial detriment, your experience of dealing with Policy Services has not been positive....”*

**7 October:** PSL received Mr O's posted copy of the new transfer of benefits form and posted this to James Hay for completion and passing to the scheme (advising the scheme of this by email). James Hay forwarded this to the scheme on **18 October**.

**19 October:** The scheme contacted PSL advising an extra information sheet (not included as part of the transfer quote) was still outstanding and would be sent to Mr O directly. Mr O returned this to the scheme on **22 October**.

**2 November:** The scheme confirmed the paperwork was in order.

**11 November:** James Hay confirmed the transfer was complete and it was waiting to allocate the funds to the SIPP trustee cash account. The amount received was £263,648, which was about 14% lower than the 4 April quotation.

**14 November:** Units were bought in Mr O's chosen fund (AXA Global Sustainable Distribution Z Acc).

\* \* \*

I'm not going to cover our Investigator's view in detail here, as I've taken a different approach in determining this complaint. But it's of note that:

- Mr O thought that it should have been possible to complete his transfer in May 2022, which would not only have meant realising a transfer value closer to £308,100 (£236,435 of which – the Credit Account – was guaranteed on 4 April); but also gaining a lower price for the AXA Global Sustainable Distribution Acc fund at that time, meaning that it would have bought more units per £1 invested.
- Alternatively, Mr O asked for interest to be added to the delayed sum.
- PSL denied that it was responsible for delays which caused Mr O to miss out on the 4 April 2022 guaranteed value, but offered compensation of £1,000 for the distress and inconvenience caused. Mr O considers this *"to be a considerably low amount due to over 12 months of me having to constantly pursue my complaint."*
- PSL established with the scheme that, in any event, it is unwilling to calculate retrospective transfer values as if the transfer had completed at any earlier point.

PSL obtained comments from its own adviser which included:

*"...it was quoted on the [transfer] paperwork that if submission was after the one month period, then [scheme] would reissue for the client to agree to the transfer. It does not say on the paperwork that this would need to be re-requested by the client or IFA. It would appear that [scheme] did not adhere to their own set down process highlighted in their letter..."*

*As the client was an industry professional with knowledge of investments from his working life he also indicated being comfortable with this [the transfer value changing]...While we were unable to get all the paperwork within the timescale to [scheme] we expected that if the value reduced that the transfer value would be recalculated...[Scheme] never produced these requotes and eventually the client had to request this himself as we were unable to. As mentioned earlier I emailed the client after the meeting where the above was highlighted and asked him to confirm and he was in agreement..."*

*...[Paraplanner] and myself both tried to speak with [scheme] directly by phone on a few occasions but we were effectively told the only way of communication was via the IFA portal. ... I will concede that we have been unable to deliver the [suitability report] and paperwork within the timescale but there are some mitigating circumstances – initial set up/ late set up of meeting / outsourced paraplanning / annual leave and the resignation of my paraplanner during the period, [scheme]*

*being unhelpful and not fulfilling the recalculated [transfer value] / workload during the period."*

Mr O also told this service:

*"I don't have access to their internal emails but I can only assume that [Mr D] is now working with Policy Services to process my pension transfer. You state that Policy Services only had a meeting with me on 4th July 2022. Why did Policy Services wait until this date to have this meeting when they could have arranged a meeting with me any day or time from 5th April 2022. I would have been more than happy to have a meeting soon after 5th April 2022, as it was them delaying the whole process and not me. I wanted the transfer to happen as quickly as possible. ...It was also myself chasing them regularly to gain updates and on investigating this it is clear from the outset that there was delay after delay after delay and if I didn't continue to chase, this transfer would have never happened."*

## **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 issued a Provisional Decision on this complaint on 21 December 2023. The points both parties raised in response to that decision were on the amount of redress payable. So, I'll reiterate my findings here first, before discussing the parties' concerns.

### *When did PSL first accept responsibility for advising Mr O?*

This is the first matter I have to determine, as the bulk of Mr O's transfer value was only guaranteed for three months. Although this wasn't a defined benefit pension transfer (and PSL doesn't give advice on defined benefit transfers), I make the same observation here as I would in any case where a transfer value is only guaranteed for a set period.

I would expect any firm requested to give advice on this sort of transfer to ensure the client is aware of the nature of the guarantee, manage their expectations as to whether it can be met, and make every effort to enable the advice process to be completed where possible within that time. They ought to be aware at the outset that failing to do one or more of these things will potentially lead to a complaint, given it's always foreseeable that the next transfer value could be higher or lower. And if it's lower, that's likely to lead to lower benefits in the receiving scheme and the client's disappointment.

In this case, I'm satisfied that PSL didn't know that Mr O was looking to transfer his pension until 28 March 2022. And in any event it didn't yet have a guaranteed transfer value on which it could base its advice: the 11 March 2022 one wasn't a transfer value, and wasn't guaranteed. So I agree with Mr O's suggestion that PSL couldn't have begun providing its advice any earlier than 5 April 2022 (the date he passed on the guaranteed transfer value). I next need to address why I consider that it's reasonable, for the purposes of the complaint

I'm considering here, to treat the point Mr D received this information as – effectively – when PSL was in receipt of the information.

### *What was Mr D's role in relation to PSL?*

The relationship between SJP (of which Mr D was a Partner) and PSL is a somewhat complicated one. As I understand it, PSL was established to enable ongoing charges to continue to be collected from non-SJP plans when the client's adviser (who may previously have been a 'whole of market' adviser) joined SJP. Those charges then facilitate the provision of information on the non-SJP policies to the Partner so that he or she can have the full picture of the client's financial situation when advising them on their SJP policies.

Should the Partner determine that advice is needed on a non-SJP policy, PSL also provides that advice (which the Partner is unable to provide himself). However, SJP is the ultimate controlling party of PSL, notwithstanding that they are separately authorised by the FCA.

This complicated arrangement is needed in order to maintain SJP's status as a restricted adviser, and so only happens *because* Mr D is Mr O's regular adviser. So I can understand why, as far as Mr O was concerned, he thought "[Mr D] is now working with Policy Services to process my pension transfer" – and I can see why he wouldn't expect to lose out as a result of any 'to-ing and fro-ing' that has to take place between PSL and SJP in order for this arrangement to be delivered.

PSL provided this service with its service proposition document which makes statements including:

*"Your Partner will continue to be your main point of contact for all your financial planning needs."*

*"Your Partner will be provided with access to your personal data and the information regarding all your non-SJP policies or plans...By doing this, we can ensure that your evolving financial position is always at your Partner's fingertips."*

[For ongoing service:] *"We have a contractual agreement with your Partner...Your Ongoing Servicing Reviews will be delivered by your Partner on behalf of Policy Services...Please note your Partner or adviser will receive a proportion of the fees payable by you for the delivery of your Ongoing Service."*

It includes a Client Agreement which "...sets out the basis on which Policy Services Limited...will conduct business with you and on your behalf while also working in conjunction with your St. James's Place (SJP) Partner." Under that agreement:

- the Partner "...undertakes to...[b]e your principal point of contact"; and
- for the Advice Service, "As your principal relationship is with Your Partner, PSL will not proactively provide you with advice unless requested to do so by either yourself or Your Partner....While remaining impartial and independent, our Advisers will aim to keep Your Partner informed in the above process."

These statements have some similarities with a formal introducer agreement that might be in place where one financial adviser may need to refer a client to another for certain services. For instance, it wouldn't be surprising to need the client's consent for the two advisers to exchange information with one another. But it seems to me that the arrangements between PSL and SJP are, by design, closer than this. As PSL has told this service in its submissions, the Partner can "*assist with the administration of this relationship [with PSL]*". For the Partner to be involved in this way – which would in my view include the funnelling of information, attending meetings and so on as Mr O's principal point of contact – I would expect PSL to have set out its expectations as part of its agreement with the Partner for him to attend to any matters that facilitate this relationship promptly.

So in my view, it's not only consistent with the way this relationship is set out, but also with how Mr O would reasonably expect the service to be delivered, and with how it would need to be delivered – in order for PSL to treat Mr O fairly in providing its pension transfer advice – for PSL to remain responsible for time delays introduced by the exchanging of information between Mr D and the PSL adviser, and by Mr D attending meetings. To do otherwise would mean that Mr O is put at a disadvantage by the arrangement between PSL and SJP, as it's difficult for him to see who is driving the process forward at any particular point in time.

Even if PSL disagrees with my assessment of the relationship between it and SJP and the implications of this, in order to fairly and reasonably ensure that consumer detriment wasn't caused, it should have had systems in place to ensure the swift transfer of information from SJP Partners to PSL where relevant. And the obligations were on it, as the firm ultimately responsible for the advice in this case, to ensure that both firms had a clear understanding of how to ensure that the additional step of passing information through the SJP Partner (Mr D) didn't add avoidable delays into the process.

*What delays did PSL cause after 5 April 2022?*

I consider the advice *process* was begun with PSL at this point – because, through Mr D, it now had the value it needed in order to give its advice. That doesn't mean I accept that PSL was already in a position to *deliver* its advice. Typically, an adviser will need to gather information about the scheme that goes beyond what's printed on the deferred benefits statement. Although it's unclear what information was specifically gathered at this point because PSL has provided very little detail, Mr O has noted that Mr D sent information to PSL on 9 May, which PSL doesn't seem to have logged until 24 May.

When Mr D was given the transfer value with a three-month guarantee period on 5 April he had already informed PSL that Mr O required its advice, and I consider from his point Mr D and PSL were (or should have been) working together to move matters forward during this three-month period. But as the whole three months were available, I don't consider it unreasonable that the first month would have been spent data gathering: this wouldn't likely have jeopardised the transfer still being able to complete during the remaining time.

However, PSL hasn't demonstrated why the gathered took until 24 May to be logged, or that it was caused by issues with a letter of authority (as its notes suggest). It refers in general to problems obtaining information from the scheme, and has provided as evidence a call recording from later in the process where the scheme refused to discuss matters on the phone and directed it back to the 'IFA portal' for a written response. I accept that from what I've seen and heard, Mr O's scheme was somewhat less accommodating than some other schemes in the way it dealt with intermediaries. It did cause some delays later on in the process. However, it was PSL's role to work to the best of its ability to advise Mr O notwithstanding the requirements of any other parties.

I would therefore need to see specific evidence, which hasn't been provided, of what exactly the hold up was in order to agree that PSL couldn't reasonably have obtained all of the information it needed by 9 May (when Mr D is noted to have passed information on to PSL). As it currently stands, in my view a delay of at least 11 working days was introduced at this point.

I accept that there would then still have been a delay whilst PSL got to grips with the unusual nature of the scheme (and ultimately took technical advice). It would reasonably need to ensure this didn't count as a defined benefit scheme, on which it was prevented from giving advice. But this still means that the point at which all three parties had discussions to agree they could proceed (10 June) is brought forward by 11 working days to 26 May. Much of the delays after this point were then caused by the time taken to schedule a meeting with Mr D. I have several observations to make on this:

- Mr O says that he wasn't the cause of this delay – and that this wouldn't make sense, given that he was chasing Mr D for the transfer to proceed. He's noted as chasing Mr D on 6 June, so I accept this argument.
- From what I can see, Mr D wanted to discuss things with Mr O first – on 24 June – before Mr D and Mr O met the PSL adviser. As Mr D was unable to advise on a



transfer into the James Hay SIPP, this can only have delayed matters – and as he was acting as Mr O's point of contact with PSL, I think PSL should have ensured that this meeting took place sooner.

- It's evident from the exchanges to arrange this appointment that PSL was aware that a delayed meeting would make it harder for it to advise Mr O within the guarantee period. But it only said that to Mr D at this point, not Mr O. I'm not persuaded that it (PSL) adequately managed Mr O's expectations – and it didn't begin to do so until 4 July, when the guarantee had already expired.
- When the discussion about the guarantee period did take place, it's clear that Mr O had some misconceptions about how his scheme worked – which PSL didn't correct. In the recording PSL has provided of its phone call with Mr O, he is heard saying that his scheme was mainly invested in cash, so the transfer value wouldn't change much. The Credit Account is a cash balance arrangement, but this doesn't mean it is invested in cash. (I can only assume Mr O was referring to the Investment Account.)
- This alone evidences that despite being described by PSL as an investment professional, Mr O wasn't familiar with how this sort of scheme worked. The letter the scheme had issued on 4 April made clear that the bulk of the transfer value was based on actuarial assumptions. That meant it could move, potentially significantly, up or down in response to changes in economic forecasts (such as the returns on bonds).
- I'm satisfied from the balance of evidence I have that if PSL had clarified with Mr O that his scheme wasn't (mostly) invested in cash and it was working to arrange the transfer within the three-month guarantee period, he would have been willing to meet with sufficient time to ensure that this could happen.

In the actual timescale, it took from 4 July (when all the parties met) to 3 August for Mr O to sign to accept the suitability report. This shows in my view that it would have been possible to complete the transfer by 4 July (when the guarantee period expired) if those parties had met shortly after agreeing they were in a position to proceed at the earlier date of 26 May.

I say this particularly as I don't think any of the later delays where various items were omitted from the forms PSL sent to James Hay should have been caused. With one notable exception (which I'll address later), PSL hasn't evidenced that the omission of these forms weren't an oversight on its part. PSL ought to have worked to ensure that when it met Mr O, and he signed to accept the suitability report, the other forms were ready and waiting for him to sign at the same time. It was PSL's responsibility to establish what the scheme's requirements were and ensure that none of the forms were missed. This included checking James Hay's requirements for a transfer, which evidently required paper forms also.

As one of the forms needed to be countersigned by James Hay, I accept that this would have introduced a further delay before meeting the guarantee period deadline. But in my view having about a month to complete all these steps was reasonably achievable. PSL would have been in a position to impress upon James Hay that there was a deadline, and follow matters up with James Hay until their completion. Mr O would likely have had some recourse to James Hay (which in the actual timescale, he doesn't because the guarantee was already missed) if James Hay hadn't met his reasonable expectations.

There was also significant delay during July (in the actual timeline) where PSL was relying on a third-party compliance expert and waiting for Mr D to agree the content of the report. Whilst PSL is free to use outside assistance, it remained responsible for the overall timescale whether or not it outsourced any of its functions to another party (and it's unclear to me why Mr D would need to agree to a report giving advice he was unable to provide). So overall, I think there were enough 'levers' for PSL to pull here to ensure it advised Mr O in

sufficient time for the scheme to receive the paperwork and meet the guarantee.

That's consistent with the fact that – as Mr O noted – PSL has accepted that it had caused delays and apologised for these. And having read the list of reasons PSL's adviser provided for the delays (which included that his paraplanner was also outsourced, annual leave was taken, and the paraplanner subsequently resigned), these should not become Mr O's responsibility.

All of this therefore means that the misunderstanding over whether it was necessary to obtain a new transfer value on the expiry of the original guarantee period, and the question mark over why the scheme chased PSL to return the transfer authorisation form (even though it should have known that it would already be out of date), are no longer relevant.

*When would the transfer have been completed?*

I noted above that there was one 'extra information' form the scheme sent Mr O for completion that PSL says wasn't included in the transfer pack (and I've seen nothing suggesting it was). On that basis, the scheme wouldn't have been able to use this form to deny Mr O the guaranteed value of his Credit Account because Mr O would have complied with all its stated requirements. But I accept that the time to exchange this form would likely still have delayed the *receipt* of funds in the SIPP to the same extent.

Using my compressed timescale, this form would likely have been sent to Mr O around 5 July and Mr O would have returned it around 8 July. It would then have taken until around 29 July for James Hay to confirm the transfer was complete, and on the next working day (1 August) the payment would have been invested in the AXA Global Sustainable Distribution Z Acc fund.

*The responses of both parties to my Provisional Decision*

Mr O was prepared to accept the redress I proposed (set out below) but requested it to be paid in full into his bank account. He said this was so he could take advice on how to best utilise the funds from a tax point of view. When I explained that it would normally be appropriate to apply a notional reduction to redress paid directly in cash to a consumer – because of income tax on withdrawing it from the pension they would not need to pay in future – Mr O said that he didn't think such a reduction should apply in his case.

Mr O said that as the lasting effect of the abolished lifetime allowance is that he can only withdraw £268,275 tax-free from his pension, he will be taxed on the remainder (over and above the significant amount he already receives from property rental income). He had already been talking to his SJP adviser about using the bulk of his pension as an inheritance tax mitigation vehicle. This is because he doesn't require all of the money in his pension to live from, and the prospect of passing sums on to his beneficiaries tax-free (if he dies before age 75) or taxed at either 20% or 40% (depending on his beneficiaries' other income, if he dies after that age) is more favourable than making taxed withdrawals from the pension now only for those sums to suffer further inheritance tax (at 40%) on his death.

Mr O also said that PSL and SJP shouldn't be charging him their fees for the period of time he encountered these problems, which includes the time lag between PSL offering to calculate compensation for him and this finally being awarded by our service. He referred to the added inconvenience of having to deal with the ombudsman service when he shouldn't have needed to, and was looking for significantly more compensation for distress and inconvenience (£5,000). He explained,

*"The mechanics behind the scenes of [Mr D] employed by [Mr D's firm], who are part of SJP and also Policy Services is not for me to have to worry about. If fees are charged, whether it be...SJP or Policy Services it is all the same to me being the customer. They charge for advice of which I have only had a 1 hour telephone conversation with [Mr D] over the time this complaint has been ongoing. I have spent approximately 200 unnecessarily hours on this complaint since Oct 2022. For the amount of stress, anxiety and vast amounts of sleepless nights I have endured over the past 17 months now, you can not put a price on this....I feel very aggrieved to pay them money for their 'services and advice' when they has basically done nothing at all to earn these monies and have just caused me a lot of stress and anxiety for me having to deal with this matter."*

PSL asked me to confirm that the implication in the Provisional Decision was correct that it would have taken almost another month for the funds to reach James Hay after securing the guarantee by 4 July (this is correct).

I passed on Mr O's comments to PSL, and gave my view that in the circumstances Mr O described, it wouldn't be appropriate to make a notional reduction for income tax - when the compensation would in fact increase the size of Mr O's estate that was subject to inheritance tax anyway, before it reached his dependants.

I also invited PSL to comment on Mr O's remarks about paying fees for services to PSL when in his view he'd received such poor service throughout the time the complaint had been running. I explained that it wasn't within my jurisdiction to make an award for poor complaint-handling, but if Mr O's concerns related to the service he was getting in return for PSL's fees more broadly, it was unclear whether PSL would require Mr O to complain about this separately or whether it would like to also settle that matter.

In response, PSL said the following:

- It was prepared to pay the compensation in cash to Mr O, but still expected a notional reduction for income tax to be made for two main reasons:
  - o Mr O would likely live past age 75 and his beneficiaries would still incur that tax;
  - o As the compensation sum was small it was more likely he would spend it in his lifetime, so wouldn't actually be passing the compensation on to his beneficiaries subject to inheritance tax
- *"With regard to distress and inconvenience, we are prepared to increase our offer in this respect by further £1,000."*

I'll explain how these comments affect the redress I'm awarding below.

## **Putting things right**

### *Financial loss*

The occupational scheme has refused to calculate retrospective transfer values, and it's not within the Financial Ombudsman Service's jurisdiction to require it to do so. We therefore won't know what the value of the Investment Account (which was never guaranteed) would have been when it should have been paid out. For the purposes of arriving at an amount of compensation that I consider is fair and reasonable, I'm going to assume that it wouldn't have changed significantly. Therefore, calculations should be based on the amount on the 4 April 2022 transfer quote (£308,100.93) being invested in the AXA Global Sustainable Distribution Z Acc fund on 1 August 2022, instead of £263,648.99 being invested on 14 November 2022.

Mr O believes that the AXA Global Sustainable Distribution Acc fund was generally increasing in value over this period and so an earlier transfer would have secured more units, but it's actually the other way around. The following table shows details obtained online of the unit prices:

Holdings	Buy/Sell	Shares	▼ Date (dd/MM/yyyy)	Currency	Price (Optional)
<input type="checkbox"/> AXA Global Sust Distribution Z Acc	Buy	1,000	09/02/2024	GBP	3.6190
<input type="checkbox"/> AXA Global Sust Distribution Z Acc	Buy	1,000	14/11/2022	GBP	3.4630
<input type="checkbox"/> AXA Global Sust Distribution Z Acc	Buy	1,000	01/08/2022	GBP	3.6480

Change in value of £308,100.93 from 1 August to 14 November 2022:  
 $£308,100.93 \times 3.463 / 3.648 = £292,476.29$

Deduct the £263,648.99 actually invested on 14 November 2022:  
 $£292,476.29 - £263,648.99 = £28,827.30$

Change in value of £28,827.30 from 14 November 2022 to the date of this Final Decision (9 February 2024):  $£28,827.30 \times 3.619 / 3.463 = £30,125.90$ . This is Mr O's gross loss.

Whilst I'm aware that Mr O was seeking a monetary loss amount of £44,452 (potentially with further interest added), that doesn't put him back into the position he would have been in, if the transfer had completed sooner – as his funds would have been invested within the James Hay SIPP. And that's the aim of any award of compensation this service makes.

However, I do think Mr O has raised a valid point about the practicability of actually adding the compensation to his James Hay SIPP. I'd overlooked that PSL isn't actually the provider of this SIPP and, as far as I know, James Hay would treat the compensation I've asked PSL to pay as a member contribution. I've confirmed with Mr O that his only income at the moment (£30,000 approx) is from renting out properties. This wouldn't count as earnings on which he can base a pension contribution, so he would be limited to the de minimus annual contribution of £3,600 gross per year.

It would therefore be pointless for PSL to try and get this compensation into a pension. However, a payment directly to Mr O in cash represents compensation in respect of benefits that would otherwise have provided a taxable income. I would normally allow PSL to apply a notional reduction to allow for income tax that would otherwise have been paid on that part of the compensation.

The lifetime allowance still limits the amount of tax-free cash Mr O can take to £268,275. So that means any more funds that this redress represents wouldn't have produced any further tax-free cash, but would be taxed at Mr O's marginal rate when he withdrew them from the pension. Although Mr O has explained it's likely that he wouldn't actually have spent all of his pension pot in his lifetime, I agree with PSL that it's most likely he would die after age 75, and his beneficiaries would incur that income tax when they receive the proceeds.

I also agree with PSL that the relatively small size of the compensation compared with Mr O's pension pot means that he would still have withdrawn at least this much from his pension before he died. So, with the benefit of PSL paying him this compensation in cash, he is able to spend the compensation instead and shelter the rest of his pension from inheritance tax. That still means that his beneficiaries will receive more than they would otherwise have done, if PSL hadn't paid the compensation – and therefore that a notional reduction for income tax remains appropriate.

When viewing the overall income tax burden that either Mr O or his beneficiaries would suffer on these extra funds I consider it reasonable to assume this would be at the basic rate of 20%. To be clear, this isn't a payment to HMRC, as the compensation itself isn't taxable. Instead, it's a notional reduction to ensure that Mr O isn't overcompensated by receiving compensation in cash which represents a loss to his pension. It follows the principles set out in the court case of *British Transport Commission v Gourley*.

#### *Fees relating to the pension transfer subject to this complaint*

Mr O says that both PSL and SJP should reimburse the fees they have collected from him. My understanding is that SJP collects no fees in respect of the pensions that are subject to this complaint, because that is the whole reason for PSL existing. I've also only considered the SJP adviser's contribution to the problems Mr O encountered with PSL, when he was acting as part of the arrangements he had with PSL. I haven't considered any wider aspect of the SJP adviser's conduct, as that would be a matter for Mr O to raise a complaint directly with SJP about if he is dissatisfied. The complaint I'm considering here is not about SJP.

In terms of PSL's fees, any initial fee for the pension transfer advice should in my view be payable because it is only by payment of that fee that Mr O could expect the transfer to have been completed in the timescale he wanted. In relation to any ongoing fees PSL collects from the James Hay SIPP, my understanding is that these are to facilitate the provision of information to assist the SJP adviser with his reviews. No such fees will have been collected in respect of the funds from Mr O's employer's scheme until the delayed transfer was received. And due to the way I've set out Mr O should be compensated in cash, PSL won't be collecting any larger initial or ongoing fee as a result of the transfer value being larger.

I consider that is fair in the circumstances as these directly correspond to the elements of poor service Mr O received from PSL *in providing him with pension transfer advice*. I explained in the Provisional Decision that PSL had already offered Mr O £1,000 for the distress and inconvenience caused to him by its delays in the transfer process. I considered that to be a fair and reasonable amount and wouldn't have awarded more. It falls within the range of awards this service would make where the impact of a business's mistake has caused substantial distress, upset and worry, with the impact felt over many months. So I'm not going to change my view of this simply because PSL has now chosen to offer an additional £1,000.

PSL hasn't specifically answered my question about whether it is treating Mr O's further comments as a complaint about the wider service it gives in supplying information to his SJP adviser (which is what I understand the ongoing fees pay for) rather than the pension transfer advice itself. It says the additional £1,000 is a further award for distress and inconvenience without being specific as to what current (or future) disputes this would settle.

In the circumstances, I don't think it's appropriate for me to require the extra £1,000 to be paid as part of this Final Decision (although this offer is still one that Mr O can choose to accept from PSL separately). This is a decision on a complaint about the poor execution of a pension transfer, not about the wider service Mr O is receiving from PSL – and it's clear from Mr O's comments that he disputes whether he should be paying PSL any fees at all (including on the funds he already had in his James Hay SIPP before the pension transfer happened). Whilst I'm happy to pass on the offer PSL has made to Mr O, that strictly goes beyond the remit of the complaint this service was originally asked to consider by him.

Mr O says the £1,000 PSL originally offered is insufficient to compensate him for the 12 months he spent pursuing his complaint. But our service is free for consumers – and the awards we make are not intended to cover the inconvenience of having to complain, or

engage with the Financial Ombudsman Service. So, I'm not able to increase the award just because PSL indicated it would offer compensation in respect of the pension transfer but this hadn't been calculated until I decided the complaint.

I appreciate this will have been a frustrating experience for Mr O, but poor (or slow) complaint handling isn't a factor we take into account when determining the impact of the issues that led to the complaint itself. What I've addressed is PSL's errors that caused the transfer to be delayed in the first place, and I'm satisfied that the £1,000 originally offered is fair compensation for the distress and inconvenience caused by those delays.

PSL's offer of a further £1,000 seems to have been prompted by Mr O's comments about the fees it is taking more widely from his James Hay SIPP. As PSL has made this further offer to Mr O, he is free to accept it by contacting PSL direct, separately from this decision which awards him the other sums set out below. I would make Mr O aware that accepting PSL's further offer may prevent him from continuing to dispute those fees, so he may want to ask PSL to clarify its position first if he remains dissatisfied.

### **My final decision**

I uphold this complaint and require Policy Services Limited to pay the amount of £30,125.90 but with a notional reduction of 20% applied to account for future income tax that would otherwise have been paid on this sum by Mr O or his beneficiaries. That means Policy Services Limited is required to pay Mr O £24,100.72.

If my award isn't paid within 28 days of Policy Services Limited's receipt of Mr O's acceptance of this decision, further interest must be added at the rate of 8% per year simple from the date of that Final Decision to the date of payment. Income tax may be payable on this interest.

Should it be necessary for Policy Services Limited to do this, it may as a condition of my award take an assignment of any rights Mr O has to take action against SJP, for any delays Policy Services Limited may consider were also contributed to by the SJP Partner.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 7 March 2024.

Gideon Moore  
**Ombudsman**