

The complaint

Mr C complains that Just Retirement Limited (Just) caused avoidable delays to his purchase of a retirement annuity. This meant that his income didn't start when it was expected to.

What happened

Mr C has a Self-Invested Personal Pension (SIPP) with a business I'll refer to as business S. He wanted to use £150,000 of the funds in his SIPP to purchase an annuity, but he held considerably more funds than this in his account.

Mr C said that in February 2023, he decided to request some annuity quotes as he was about to stop work. Mr C said he'd received all the annuity quotes in April 2023.

On 9 May 2023, Mr C signed an application for an annuity with Just. He sent the signed application to his business S adviser the same day. Business S then sent the application to Just for processing on 10 May 2023. It emailed Mr C to confirm this. Within that email it stated:

"[Just] have confirmed that the relevant team will be in contact within 10 working days."

Just's application form asked for Mr C's estimated fund value. Mr C completed the form with £150,000, the amount he wanted to use to purchase his annuity.

Just sent a transfer request to business S through the Origo system on 27 May 2023. It answered yes to the question 'Transfer All Funds?'. And quoted the approximate value of the funds as £150,000.

Business S said it received the document on 29 May 2023. It said that as the instruction requested a full transfer, it appeared that Mr C's fund would have an estimated value of £150,000. But the instruction didn't meet business S's requirements for the transfer as the actual fund value as at 29 May 2023 was £367,628.72, considerably outside its standard tolerance levels of 25%. Business S also said that its standard service level for pension transfer enquiries/updates is five working days.

Business S contacted Just for clarification about the transfer type. It then received an amended transfer request through Origo on 21 June 2023. This confirmed that the request was for a partial transfer of £150,000.

Business S told Just in its 21 June 2023 email that all its requirements were now in place to complete the transfer. It also confirmed that its standard service level to complete a transfer on receipt of an instruction was eight working days.

Business S sent Just £150,000 on 6 July 2023. Just completed the set-up of Mr C's annuity on 21 July 2023.

Mr C said when he'd applied to Just on 10 May 2023 he'd been told that processing would take 10 business days. He therefore felt that processing should've completed by 24 May 2023. But this hadn't happened until 7 July 2023. He said he was then told that there would

be further delays to the process. And that Just didn't confirm final processing until 21 July 2023. So Mr C complained to Just about the delay.

Just didn't resolve Mr C's complaint within the eight weeks allowed by the regulator. So he referred it to this service. Mr C said that Just had told him that payment would be backdated to the date it received the funds. But he felt he'd lost out on 44 days of annuity income.

Mr C said that it had been a very unsettling and distressing experience. He said he'd carefully planned his retirement well in advance of his planned retirement date in early July 2023, so that he would have overlapping funds available going into the first month of retirement. He said he'd expected to receive the first full payment on 1 June 2023. But that due to the delays he only received a partial first payment on 1 August 2023 and that the first full annuity income payment wasn't made until 1st September 2023.

Our investigator repeatedly requested Just's business file. But it was never provided. So he investigated the complaint using the information provided by Mr C and business S.

Our investigator felt that the complaint should be upheld. He felt that Just was responsible for half of the total avoidable delay. Separately, he felt that business S was responsible for the other half of the delays. He said this was because Just had incorrectly requested the £150,000 needed to purchase the annuity as a full transfer, when it was in fact only part of the funds available and should therefore have been requested as a partial transfer. He also felt that Just had caused an avoidable delay when it had taken longer than it should to send the transfer request to business S. He felt it should've reasonably sent this by the fifth working day; 17 May 2023. Our investigator also felt that Just had taken longer than it should to set up the annuity once the funds had been received.

Our investigator felt that if Just hadn't made any mistakes or caused any avoidable delays to the transfer, business S wouldn't have needed to confirm the first Origo instruction. He felt that business S would then have reasonably processed the initial instruction within six working days, so by 25 May 2023. And that Just should then reasonably have set up the annuity within a further five working days, so by 2 June 2023. Had this happened, he felt that Mr C would've received his first income payment by 1 July 2023. He set out how he felt fair compensation could best be achieved.

Our investigator initially felt that the £100 Just had apparently offered Mr C for the distress and inconvenience it had caused him was reasonable.

Mr C said he would now wait for Just to respond to our investigator.

Our investigator eventually spoke to someone at Just on 16 April 2024. He explained that Just hadn't responded to any of his emails or returned any of his calls. Just confirmed that this service was using the correct email address.

Our investigator issued a slightly amended view. He now felt that Just should pay Mr C £200 compensation for the distress and inconvenience it'd caused. He said this was because the delay had occurred during an important and stressful time for Mr C. Our investigator made a slight change to how he'd set out how redress should be calculated.

It should be noted that our investigator has also issued an uphold view on Mr C's complaint about business S. He felt that it should share responsibility for any financial detriment the delays had caused Mr C.

As Just hasn't engaged with this service on this complaint, it 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 going to uphold it. I agree with our investigator that the first annuity payment should've been made on 1 July 2023. But I have a slightly different view about when Just should've set up the annuity. I also agree with our investigator that Just should be held responsible for 50% of any assessed financial redress. I'll explain the reasons for my decision.

The evidence shows that Just initially made a mistake within the Origo instruction. It thought that the transfer was a full transfer of all of Mr C's funds. I think this misunderstanding occurred because Just's application form didn't ask Mr C to confirm whether the transfer would be a full or partial one, but the Origo instruction required clarity on this point. I consider that Just made an incorrect assumption on the Origo instruction when it could've simply clarified whether the transfer was full or partial. And that this caused a delay as it didn't meet business S's requirements for the transfer.

The Origo instruction stated that Just had received Mr C's completed application form on 11 May 2023. It stated that the scheduled completion date was 8 June 2023. It also said that the annuity rate expiry date was 15 June 2023.

After a number of further delays, including the excessive time it took for Just to send the completed application form to business S, Just issued a second Origo instruction on 21 June 2023. This now correctly stated in the transfer notes: "*Just are expecting the partial fund amount of £150,000 to be sent over as an Open Market Option.*". It also correctly answered "No" to the "Transfer All Funds" question.

The evidence shows that business S had everything it needed to complete the transfer on 21 June 2023. It said its standard service level for completing a transfer after this was eight working days.

Therefore, if Just had correctly completed the first Origo form without delay by 17 May 2023, I'm satisfied that business S should've completed the transfer by 30 May 2023.

I agree with our investigator that it would then have been reasonable for Just to have taken up to five further working days to set up the annuity. Therefore in my view, this should've been done by 6 June 2023. In actual fact, Just took from 6 July 2023 when it received the £150,000 to 21 July 2023 to complete the annuity set up, but it should've only taken up to a working week.

Although the date I've come to – 6 June 2023 - differs slightly from that suggested by our investigator, I agree that Mr C could then have received his first income payment by 1 July 2023. I also agree that Just are broadly responsible for around half of the delays incurred. And that it should therefore cover 50% of any losses identified.

I've also considered the distress and inconvenience the avoidable delays Just caused to the set-up of the annuity have caused Mr C. He has told this service that he found the transition from work into retirement very scary. And that he felt vulnerable, wondering if he'd done the right thing. Based on everything I've seen, I agree with our investigator's updated view that Just should pay Mr C £200 in respect of the distress and inconvenience it has caused.

I therefore uphold the complaint.

Putting things right

Fair compensation

My aim in awarding fair compensation is to put Mr C back into the position he would likely have been in, had it not been for the avoidable delays.

Just Retirement Limited will need to work with business S do assess any financial loss.

Past Loss

Mr C hasn't received the income payments he should've received because of the delay.

In order to work out what Mr C should've received, but for the delays, the following calculation should be carried out.

A) Total of all the notional payments which Mr C should've received from the correct annuity, net of his marginal rate of tax, from 1 July 2023 up to the date of my final decision.

B) Total of all the actual payments which Mr C has actually received from his annuity, net of his marginal rate of tax, from 1 July 2023 up to the date of my final decision.

C) Past Loss = A – B. If the answer is negative, there's a past gain and no redress is payable.

In working out the net payment, Just Retirement Limited should assume that Mr C was a 20% rate taxpayer.

If the calculation identifies a past loss, Just Retirement Limited must pay this to Mr C with the addition of 8% simple interest from the date the amount should've been paid to the date of my final decision.

Future loss

The evidence also doesn't confirm whether or not Mr C would've achieved a different annuity rate if there'd been no delays. If his annuity has been arranged on a different rate than he should've received, but for the delays, then he may not be receiving the income that he should be receiving.

D) The notional gross pension per year which Mr C should've been receiving from the date of settlement onwards.

E) The actual gross pension per year Mr C currently will receive from the date of my final decision onwards.

F) Future Gross Loss per year = D – E. If the answer is negative, there's a future gain and no redress is payable in respect of future loss.

G) Just Retirement Limited must then work out what it would cost to replace any lost income in F) by buying an annuity on the open market with these features. It will need to refer to published annuity rate tables and get a quote from a competitive provider.

H) The purchase price of the annuity found in G) is Mr C's gross future loss. This should be paid directly to him as a lump sum after making a notional reduction to allow for income tax that would otherwise have been paid at his likely rate on the income in F – presumed to be 20%.

Fund loss

The evidence doesn't show whether Mr C disinvested his funds in order to transfer £150,000 to Just. If he did, that disinvestment could've been done on a different date and at potentially different unit prices but for the avoidable delays.

Just Retirement Limited should compare the actual value of Mr C's SIPP with business S with what it would've be worth had it sent the correct Origo instruction to business S on 17 May 2023. This is the fair value.

If the fair value is greater than the actual value, there is a loss and compensation is payable.

If the actual value is greater than the fair value, no compensation is payable.

The compensation amount should if possible be paid into Mr C's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr C as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid.

If Mr C has remaining tax-free cash entitlement, 25% of the loss would be tax-free and 75% would have been taxed according to his likely income tax rate in retirement – presumed to be 20%. So making a notional reduction of 15% overall from the loss adequately reflects this.

If Just Retirement Limited identifies that Mr C has suffered a combination of losses and gains, it can offset the losses against the gains. Any offsetting can only be done after any tax adjustments have been made to the future loss, so that it's on a net-for-net basis.

If payment of compensation is not made within 28 days of Just Retirement Limited receiving Mr C's acceptance of my final decision, interest must be added to the compensation at the rate of 8% per year simple from the date of my final decision to the date of payment.

Income tax may be payable on any interest paid. If Just Retirement Limited deducts income tax from the interest, it should tell Mr C how much has been taken off. Just Retirement Limited should give Mr C a tax deduction certificate in respect of interest if he asks for one, so he can reclaim the tax on interest from HMRC if appropriate.

Once the above calculations have been done, Just Retirement Limited must pay 50% of any resulting sum.

Just Retirement Limited must also pay Mr C £200 for the distress and inconvenience the delay has caused him.

My final decision

For the reasons I've given above, I uphold the complaint. Just Retirement Limited should pay the amount calculated as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 3 September 2024.

Jo Occleshaw
Ombudsman