

The complaint

In 2022 Mr F's Financial Adviser ('FA') assisted him in transferring, and consolidating, his Defined Benefits Pensions into a PSG SIPP Limited ('PSG') Self-Invested Personal Pension ('SIPP'). The transfer was duly completed. The plan he had with the FA was to make a Pension Commencement Lump Sum ('PCLS') withdrawal from the SIPP (which happened in October 2022), and then invest the remaining cash (the 'net cash').

He has pursued a separate complaint against the FA (about matters related to the FA), but the present complaint is only about PSG. His initial complaint submissions referred to communication issues with PSG, matters related to presentation of its fees and its deduction of adviser fees, which related to his consideration, in late 2022, of a switch away from the PSG SIPP to another SIPP provider.

However, and partly because of the contents of the other complaint, he has since clarified that the main issue to be determined in the present complaint is about PSG's response to his instruction, in late November 2022, to return to the PSG SIPP the net cash it moved (earlier in that month) to an external General Investment account ('GIA'). That payment was instructed by the FA. He disagreed with it and asked PSG to reverse it. He says PSG delayed in executing his instruction, that it did not do so until May 2023, and that he incurred an investment related financial loss because of the delay – which he seeks redress for.

What happened

I issued a Provisional Decision ('PD') for this complaint on 28 August 2024. One of our investigators had initially looked into it, and issued two views on it. However, my findings differed in some respects, hence the PD.

With regards to the complaint's background, the PD mainly said –

"The investigator noted that Mr F's instruction to PSG, to return the net cash to the SIPP, was given on 25 November 2022, that the GIA provider (AJ Bell) sent PSG documentation for the return on 30 January 2023, but PSG did not complete and return that documentation to AJ Bell until 2 May 2023.

Mainly for these reasons, she concluded that PSG had caused an unnecessary delay and that the main complaint issue should be upheld; that it should have requested the return of the net cash from AJ Bell within five working days of Mr F's instruction (so, by 1 December 2022); that the return would probably have been completed by 9 December 2022 (based on the six working days it took AJ Bell to return the net cash when the request was actually/eventually made); that, instead and in fact, the net cash was not returned to the SIPP until 10 May 2023; so, the period of delay for which PSG is responsible and for which Mr F should be compensated is between 9 December 2022 and 10 May 2023 (the 'redress period').

In her first view, the investigator found that the PSG SIPP's cash account interest rate should be used as the redress calculation benchmark, with the net cash applied to the calculation. She said there is evidence that Mr F did not intend to invest the net cash so the

use of an investment related benchmark is inappropriate, and that the SIPP switch (to AJ Bell) he considered towards the end of 2022 had not happened at the time so it is not possible to know how the [AJ Bell] SIPP would have been invested.

PSG accepted the first view, but Mr F did not.

He made a number of comments on the investigator's wider findings and on her approach to those findings.

On the matter of redress for the main complaint issue, he considered that the investigator had misdirected herself in using the SIPP cash account's interest rate as the redress benchmark; he said she was wrong to conclude that he did not intend to invest the net cash; he referred to email evidence which he said showed that his plan and instruction to the FA was to invest, after the PCLS withdrawal, the net cash (minus 3% retained in the cash account to cover fees) equally across three out of four specific funds the FA had recommended; he argued that investment in those three funds would have happened, but for PSG's delay in having the net cash returned; for this reason he said the three funds serve as the natural benchmark for calculating redress over the redress period; in the alternative, he said there is support across our decisions in cases comparable to his for the application of interest at the rate of 8% simple per year to compensate him for the loss of use of the net cash during the redress period.

In her second view, the investigator said information about Mr F not pursuing the SIPP switch until December 2023 (despite the net cash having been returned in May 2023), about the switch being completed in February 2024 and about Mr F then investing the net cash (within the new SIPP) in the Vanguard FTSE Developed World ex-UK Equity Index £ Acc Fund (the 'Vanguard fund') in March 2024 all needed to be factored into the redress provisions.

She considered that this information means responsibility for the overall delay in investing the net cash is shared between both parties (including responsibility on Mr F's part for the delay in conducting the SIPP switch), and that but for their delays the SIPP switch would have been completed by 16 February 2023 and the Vanguard fund investment would have been made by 21 September 2023. The investigator said the redress calculation, using the Vanguard fund as the benchmark, should be conducted on this basis, starting from 21 September 2023 and ending with the settlement date.

Mr F rejected this view too. He considered that it compounded the errors made in the first view. He made detailed submissions in this respect.

In the main and with regards to redress, he argued –

- that the only matter to address in his complaint is PSG's delay in executing the return of the net cash to the PSG SIPP;*
- that, based on the investigator's findings the only relevant period of delay is the redress period (9 December 2022 to 10 May 2023);*
- that what he did or did not do in relation to the SIPP switch has never been a part of his complaint, is irrelevant to his complaint and was/is a matter that was wholly within his discretion (in other words, he was not obliged to conduct the switch at all, and if or when he chose to apply for it was completely his gift, so when he applied for it did not amount to a 'delay' on his part);*
- that events, after the redress period, leading to the SIPP switch and then the Vanguard fund investment therefore have nothing to do with the complaint or redress for the complaint;*

- *that particular facts related to those events show that even if the events were relevant to his complaint, he did not commit the delay attributed to him and PSG retains primary and sole responsibility in the matter;*
- *that the revised redress provisions therefore lack a credible basis;*
- *and that the open-ended settlement/end date in the provisions unfairly allows PSG to manipulate the calculation's outcome, by seeking a settlement date on which relevant market conditions and prices result in reducing (potentially to nothing) the redress value outcome."*

I then made the following main provisional findings –

"My focus is on redress because it is apparent that the upholding of merit in the complaint is not in dispute.

As highlighted by the investigator, the facts establish that Mr F instructed PSG in November 2022 to recover the net cash from the AJ Bell GIA and to return it to the PSG SIPP. They also establish that despite AJ Bell issuing documentation in this respect in January 2023, PSG did not act until May 2023. I have not seen evidence to justify its delay and inaction during this period and there does not appear to be a meaningful explanation for it. I endorse and incorporate into my findings the investigator's conclusions (including her reasons), in the first view, that PSG is responsible for the delay in returning the net cash to the PSG SIPP and that but for PSG's inaction and delay the net cash would have been returned to the PSG SIPP by 9 December 2022.

To its credit, PSG readily conceded and accepted the investigator's finding on merit, and her findings (in the first view) on the start and end date of the redress period. For the sake of completeness, I also endorse and incorporate into my findings the investigator's conclusions (and reasons) in her first view on the redress period and on its start and end dates.

Where I disagree with the first view is the benchmark that was used, and I explain my reasons below. In terms of the second view, I understand the holistic approach taken by the investigator, but I consider that the facts and circumstances of Mr F's complaint show that the main complaint issue is isolated from the other issues and events that surround it, and that it can therefore fairly be treated in isolation.

PSG's delay in executing his instruction to return the net cash is the main complaint issue. That stands separately from the matters in his complaint about the FA. There is no dispute in this respect, especially as Mr F has pursued a separate complaint about the FA. It also stands separately from his plan, which was indeed at his discretion, to switch away from the PSG SIPP to the AJ Bell SIPP.

There is evidence that he decided to pursue the switch in November 2022 and that, for this purpose, he opened the AJ Bell SIPP at the time. However, the switch was not a pre-requisite for using the net cash. Evidence shows that, initially, the only thing he wanted to complete before using the net cash was the PCLS withdrawal, and that happened in October 2022 before the events in November 2022. His experiences leading up to this appear to have prompted the consideration of moving to another SIPP provider. Evidence suggests that then he planned to switch and invest within the AJ Bell SIPP. However, as AJ Bell confirmed, the net cash needed to be returned from the AJ Bell GIA to the PSG SIPP before it could be moved into the AJ Bell SIPP.

The key consideration is about whether (or not) the delay in returning the net cash to the PSG SIPP caused Mr F a financial loss.

The natural end date to this consideration is as the investigator identified in the first view –

10 May 2023. This was when the net cash was returned to the SIPP. At this point, Mr F regained control over it, in the context of the SIPP, and could do with it what he wished. Prior to this point, he could not make any SIPP investment because the net cash was not in a SIPP – and it is important to observe that the objective was to invest within a SIPP, for the obvious pension/tax wrapper benefits of doing so, and that was reasonable.

Therefore, there is no call to consider compensation afresh beyond 10 May 2023. I appreciate it could be argued that an ongoing (beginning from 9 December 2022) basis for compensation could extend beyond this point – distinct from one arising afresh. This is the approach the investigator appears to have taken. I can see why she could have considered it worthy, given the factual connection between Mr F's plans for the PSG and AJ Bell SIPPs. However, on balance, I disagree with the approach.

Investments are inherently time sensitive. They are also sensitive to prevailing circumstances (including personal and market circumstances) and to changes in those circumstances over time. The plan Mr F had for the net cash (between the PSG and AJ Bell SIPPs) and that he could have or was prepared to apply around November/December 2022 would not have automatically remained the same five to six months later in May 2023. During that relatively lengthy (especially in investment terms) intervening period he did not have the net cash in either of the SIPPs so his initial plan could not be executed. By May 2023 circumstances, including the markets, prices, his investment plans, his position on the timing of the SIPP switch and his personal circumstances (some of which he has shared with us), had changed.

On balance, I do not find what Mr F did with the net cash, the PSG SIPP and the AJ Bell SIPP after May 2023 to be relevant to awarding him redress for the delay PSG caused. It would not be reasonable to dictate or suggest what exactly he should have done in any of these respects because, I repeat, circumstances had changed. He was entitled to review all associated elements.

It was reasonable for him to make an informed decision about his investment(s), based on the circumstances that faced him, and to execute that decision at the time he considered best (with or without advice). He had terminated the FA's service before this point, so he appears to have been making his own investment decisions. He had planned the SIPP switch in late 2022, but he was not obliged to immediately proceed with it in May 2023, or to proceed with it at all. As he has argued, there was no obligation upon him in terms of conducting or not conducting the switch. Like his entitlement to review his investment considerations, to make an informed decision based on prevailing circumstances and to execute that decision at the time he considered best, there was an entitlement to do all the same with regards to the SIPP switch.

Overall, on balance and for the above reasons, I do not find grounds for the redress period (beginning on 9 December 2022) to continue beyond 10 May 2023, or to continue up to the SIPP switch (and Vanguard fund investment) in 2024. In another case, depending on the facts and circumstances, grounds for such an extension might exist. However, in the present case, for the reasons given above and for the reasons already addressed by the investigator in her first view, the period over which Mr F was deprived the net cash, due to PSG's inaction and delay, began on 9 December 2022 and ended on 10 May 2023. This is the natural period for redress and I do not consider that there is a call, from the circumstances of the case, to extend the calculation of redress any further.

To complete this finding, I have given thought to the following potential argument – if it is accepted that the net cash would have been used for pre-planned investments from 9 December 2022, but for the delay caused by PSG, then is it not reasonable to consider whether (or not) redress on that basis, continuing beyond 10 May 2023 and perhaps up to

the date of settlement should be applied? After all, as part of his arguments Mr F has invited us to find that three of the four pre-planned and recommended investments, at the time, would probably have been made, but for the delay. If so, it is arguably possible to calculate redress using the three investments as the natural benchmark and, with grounds to assume that the investments would have been retained, doing so up to the date of settlement.

However, for the reasons I will give below, I do not accept Mr F's invitation to use the specific three investments as the benchmark for calculating redress. I also do not have enough information to know, on balance, what type of alternative investment(s) he would have used the net cash for had it been returned by 9 December 2022. As I also explain below, I do find that he would have used it for investment – as opposed to leaving it inactive in the SIPP's cash account – but I cannot safely conclude what that investment would have been, so I do not have a natural benchmark to use from 9 December 2022 up to the date of settlement.

I understand Mr F's concern about using the date of settlement as a calculation end date. Depending on the circumstances, it is not uncommon for us to do so in some of our decisions. I could address his concerns about it being manipulated by a firm, but I do not need to because, as stated above, I agree with the investigator's first view that the end date for the calculation of redress is 10 May 2023, so I will not be using the date of settlement.

With regards to the benchmark to use in calculating redress, I disagree with the use of the SIPP's cash account interest rate and I disagree with the use of the three specific investments Mr F has referred to. Instead, I consider that Mr F should be viewed as having been deprived, by PSG's inaction and delay, access to and use of the net cash between the redress period, so he should be compensated for that.

As the investigator explained to him, where complainants have been deprived of funds it is possible for us to award compensation to redress that by applying interest on the deprived amount at the rate of 8% simple per year. Mr F was deprived of the net cash during the redress period, and that the deprivation extended to preventing investments that would probably have been made, but for the delay.

On balance, I am satisfied with available evidence that shows Mr F was, broadly speaking, in 'investment mode' within the context of the pension transfer to the PSG SIPP, in terms of what was to follow after the PCLS withdrawal and in the context of the SIPP switch he planned. The email correspondence between him and the FA that he has referred to reflects this too. In that correspondence he suspended the move towards investing, but only pending completion of the PCLS withdrawal. He also questioned, and put a stop to, one of the recommended funds but that did not apply to the other three.

The reason I am not persuaded that he would have invested in the relevant three funds, on 9 December 2022, is because of evidence (mainly from him) showing that he had begun to experience problems with the FA prior to this time, had begun to lose trust in the FA prior to this time and because he was no longer serviced by the FA at this time.

Without delving too deep into his complaint against the FA, which is beyond the scope of this PD, there is enough information related to that complaint – which I have considered only for the purpose of treating his claim about the three recommended funds – to conclude, on balance, that by December 2022 his trust in the FA had been irretrievably broken. I am persuaded that this probably went as far, or would have gone as far, as him questioning his trust in the recommended three funds too. The following provide support for this finding –

- *his email to the FA, in which he objected to one of the four recommendations but said he would consider the other three after the PCLS payment, was sent on 21*

September 2022;

- *there is evidence from his subsequent correspondence with PSG that he had already decided, at the time, that he had lost trust in the FA and that he would terminate its service following completion of the PCLS payment;*
- *the PCLS payment was completed in October 2022;*
- *on 2 November 2022 he terminated the FA's service;*
- *and, in the course of doing so he asked that the FA to instruct PSG to retain the net cash until he was ready to proceed with investment.*

In the above context, I consider it unlikely that he would have proceeded with the relevant three recommended funds on 9 December 2022. Indeed, the instruction he asked the FA to convey to PSG on 2 November suggests that he had decided against those investments and wanted to consider an alternative(s) before proceeding with that.

Consequently, whilst evidence does not support the use of the three recommended funds as the redress benchmark, it also does not support use of the PSG SIPP cash account's interest rate as the redress benchmark. Mr F initially had defined investment plans for the net cash, then upon terminating the FA's service he appears to have sought time to review and consider an alternative investment plan. Then followed the delay, until May 2023, which created fresh cause to review further. I consider it reasonable to find, on evidence, that he did not intend or wish to leave the net cash inactive and uninvested in the PSG SIPP cash account. Indeed, but for PSG's delay, it is possible that he could have proceeded with the SIPP switch, so that too would have meant the net cash was not left uninvested in the PSG SIPP cash account. He intended to invest and his desire to do so was affected by the delay and then by the changes in circumstances after the delay.

For the above reasons, I consider it fair to compensate Mr F for being deprived the use of the net cash during the redress period by applying interest on the net cash amount, at the rate of 8% simple per year, for the duration of the redress period and by having PSG pay him the resulting amount. In addition, I endorse the investigator's award to him of £250 for the trouble and distress the complaint has caused him. The redress that I have provisionally concluded upon is, in my opinion, something that PSG could and should have determined at the point of addressing Mr F's complaint. Had it done so, it would have served as a fair resolution and it could have mitigated the trouble and distress he was caused, but that did not happen. Overall, I consider £250 a fair level of compensation for the trouble and distress he has faced."

PSG responded to the PD. It confirmed that it has nothing to add and that it agrees with the PD's findings.

Mr F also responded to the PD. He welcomed and agreed with its findings on merit and redress, but he disagreed with my endorsement of the £250 award for trouble and distress.

With regards to redress, he said that by his calculations the 'net cash' amount was £175,382.33, that the 'redress period' (9 December 2022 to 10 May 2023) comes to a total of 152 days, and that 8% simple interest per year calculated on the net cash over the redress period results in a total of £5,842.88 interest, which is what should be due to him.

In terms of compensating him for the trouble and distress the matter has caused him, he said the £250 was significantly insufficient. He noted that the financial loss he incurred is addressed separately by redress, but he argued that he had suffered the following additional detriments – "*... countless queued and/or unanswered phone calls, the unanswered emails and shocking general level of customer service*", "*... the feeling of effectively losing £175,000 and the frustration of not being able to get it back solely due to incompetence ...*",

and his numerous and repeatedly frustrated attempts to get PSG to do “... *the most simple thing and give the instruction to return [his] funds*”.

He also referred to his efforts in pursuing the complaint, and pointed out that I had already recognised in the PD that there does not appear to be a meaningful explanation, or justification, for PSG’s inaction, and that I said the redress approach set out in the PD is “... *something that PSG could and should have determined at the point of addressing Mr F’s complaint. Had it done so, it would have served as a fair resolution and it could have mitigated the trouble and distress he was caused, but that did not happen*”.

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, and given that neither party disputes the PD’s findings on merit and redress, I have not seen cause to review those findings. I retain those findings and I incorporate them into this decision. In response to Mr F’s comments about the trouble and distress award, I have reviewed the award, but unfortunately for him I am not persuaded to change it. The award of £250 remains the same, for the reasons given in the PD and those addressed below.

I understand the points Mr F has made. As I said in the PD, the delay (as reflected by the redress period) was relatively lengthy, especially in the context of investments/pension investments.

I empathise with what appears to have been his feeling of powerlessness with regards to the task of returning the net cash to the SIPP, despite that cash belonging to him and despite him having already given clear instruction for its return. He should not have had to face such an experience and such a feeling, and I appreciate the frustration that would have caused him – including the frustration he felt in dealing with PSG’s customer services function.

However, I do not consider that the feeling would have extended to one of ‘loss’ because the GIA, in which the net cash was, also belonged to him. The matter was about making the net cash available in the relevant SIPP as he wanted it to be, not about the net cash being lost altogether and beyond his reach during the redress period.

I acknowledge his effort in pursuing the complaint and its resolution, through PSG’s process and then through ours. I maintain what I said in the PD about the redress approach being something PSG could and should have determined when it dealt with the complaint. Assuming that resolved the matter, it could have helped to avoid the need for Mr F to continue his pursuit up to the point of this decision. However, in this context, the redress that I said could previously have been awarded to him is now being awarded to him, so the complaint’s resolution is still available to him.

The award for trouble and distress is about compensating him for such effects. It is not about punishing PSG. I do not have the power to make punitive awards. If I were to increase the award because of my finding that PSG could and should have determined the aforementioned redress earlier, but did not, that could arguably be a punitive measure. I have taken into account how the lack of an earlier resolution has inevitably resulted in Mr F continuing to be troubled by his pursuit, but that is not a significant component of the award because it is quite common for complaints to reach us in such circumstances, and it differs from punishing PSG for not reaching a particular complaint response.

My findings set out how the complaint should be resolved, but in doing so my conclusions do

not and cannot include punishment to PSG for how it addressed the complaint. In this respect, it is also noteworthy that 'complaint handling' is not a regulated activity, so I do not have jurisdiction to make a finding of merit on how, in isolation, PSG handled Mr F's complaint.

I also acknowledge Mr F's efforts in presenting his complaint to us, including the submissions and explanations he has competently constructed and that I have found helpful. However, responsibility for this naturally fell to him because it was/is in his interest that we are informed of his views, arguments and submissions for his complaint. I do not consider that in the circumstances of his case I can fairly increase the award for this reason.

Overall, and for the reasons given above (and in the PD), I retain the finding that Mr F should be paid £250 for the trouble and distress caused to him. As he appears to acknowledge, the main form of compensation called for in his case is redress for his financial loss, which has been awarded and which covers the main detriment(s) in his case.

I appreciate Mr F volunteering his calculation of redress and, if it wishes, PSG can draw guidance from that calculation. However, as I set out below, PSG is responsible for calculating and paying redress.

Putting things right

I order PSG to do as follows –

- Calculate, using actual and accurate figures, the net cash that was moved to the GIA and that would have been returned from the GIA to Mr F's PSG SIPP on 9 December 2022, but for PSG's delay in executing his instruction.
- Calculate interest on the net cash amount at the rate of 8% simple per year from 9 December 2022 to 10 May 2023. The result will be the 'redress amount'.
- Pay the redress amount directly to Mr F.
- Pay interest, at the rate of 8% simple per year, on the redress amount if it is not paid to Mr F within 28 days of PSG being informed that he has accepted this decision. This is to compensate him, separately, for any delay by PSG in paying him the redress amount. If the redress amount is paid to him within the aforementioned 28 days, no additional interest payment is due.
- Pay Mr F £250 for the trouble and distress the matter has caused him.
- Provide Mr F with a calculation(s) of the payments in a clear and simple format.

My final decision

For the reasons given above, and in the PD, I uphold Mr F's complaint. I order PSG SIPP Limited to calculate and pay him redress as set out above and to pay him £250 for the trouble and distress he has been caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 14 October 2024.

Roy Kuku

Ombudsman