

The complaint

Mr E complains about delays by St James's Place UK plc (SJP) that caused him financial loss.

What happened

Mr E said that in autumn 2023 he asked SJP to crystallise his pension. He intended to transfer to another provider and needed to do this before he could transfer. He had to chase several times. He believed his funds finally went into drawdown on 15 December 2023. He requested a transfer to his new provider on 26 January 2024 but the process started in December 2023. The new provider confirmed receipt of around £1,270,000 on 6 February 2024. He wanted compensation for the difference between SJP's fees and his new provider fees. He estimated the additional fees at around £1800.

I issued a provisional decision in this case and said the following:-

My provisional decision.

There was no dispute that SJP caused a delay so I did not need to consider that further. I could therefore consider an award for any financial loss and distress and inconvenience caused by that delay.

Financial loss

The purpose of an award for financial loss was to put Mr E back into the position he would most likely have been in but for the delay.

In order to do that I thought that SJP should complete a calculation to compare the actual value of Mr E's investment with that which would have been achieved had he transferred at the earlier date as though there was no delay. This should be done in accordance with the putting things right section below.

I didn't think there was a loss due to the delay in crystallisation this was because the money remained invested throughout this time. As SJP said there was no tax-free cash entitlement as Mr E had already used his allowance. However the delay in crystallisation did cause a delay in the date of transfer and that is therefore reflected in the loss calculation I set out below.

Loss due to Delay in Transfer.

The investigator set out a basis for his assumption that the transfer would have taken place on 20 November 2023 but for the delay by SJP. Aside from the time gap between encashment and transfer neither party disputed the timeline proposed. I did not therefore reconsider the timeline in detail as I thought it was fair and reasonable. I did however consider further the delay between encashment and transfer.

SJP said but for the delay it would have sold his holding into cash on 10 November 2023 based on receiving a transfer instruction on 9 November 2023 and would have transferred

the encashed amount on 20 November 2023.

The regulator rules that apply to SJP require it to conduct business with due skill, care and diligence. Further I considered the industry framework for transfers and in particular the Transfers and Re-registration Group framework which is supported by the FCA. This suggested an end-to-end time frame for a cash transfer would be ten *working* days.

However based on what SJP had said it would have done, the gap between encashment on 10 November 2023 and transfer on 20 November 2023 was only 5 working days. This was less than the industry guidance of ten working days so I thought it was fair and reasonable to use the shorter time period confirmed by SJP and this was also the basis used by the investigator.

I noted that Mr E did not accept the 10-day difference between the value date and the transfer date. For the reasons given above I thought it was fair and reasonable.

During this time Mr E also made monthly withdrawals of around £4,000. Those withdrawals needed to be reflected in the loss calculation and I added a provision for this.

Mr E also said that the increase in value crystallised would increase any potential further lifetime allowance charge if reintroduced. But it was not the purpose of the loss calculation to guess at any changes that might be made to tax in future and it was therefore based on the position at the time of the delay.

I noted that Mr E would prefer a direction that SJP should simply pay him the difference between the fees he had to pay to them and the lower fees that he would have paid to his new provider. But I didn't think that was fair and reasonable as it did not take into account any difference in investment performance. The calculation that was set out would take this into account.

I considered that Mr E has said some of the funds that he had proposed to invest in had been removed from the recommended list of the new provider during the delay period. He didn't think the advice from his new provider would have been the same 11 weeks earlier. He provided evidence to show that in September 2023 the advice would have been to invest 2/3rds in shares and 1/3rd in bonds. However the position was revisited in early January 2024 in the light of changes in inflation and interest rates. The adviser noted that Mr E had changed his view and now wished to invest 75% in shares and 25% in bonds. Based on this it seemed that Mr E's risk appetite changed in the interim period.

I noted that there was a gap between the date the crystallisation was completed and the actual transfer as he said he was taking advice on where to invest. It therefore seemed that he had risk based discussions about the proportions of different classes of investment but he had not taken specific advice as to the investments. It would therefore be impossible to know what investments he would have selected at the earlier date. On that basis I thought it was reasonable to take the approach suggested of assuming he would have invested at the earlier date in the investments he actually invested in when he did transfer.

I noted Mr E's comments about investment reviews but it did not seem he had been put to additional cost as the advice was covered within the amount originally provided and indeed the actual investment advice seemed to have post-dated his change in risk appetite outlined above. Further he would always have needed to take advice on specific investments which is what happened. So I did not think it would be fair or reasonable to make any award in that respect.

I also considered that SJP said Mr E did not invest his money immediately on receipt by the

new provider and noted there could be several reasons for that. It seemed Mr E remained in cash in the interim period. I noted this in the redress section so that the date at which the money was assumed to be invested for the calculations reflected the period between transfer and investment.

Distress and inconvenience.

The purpose of an award for distress and inconvenience was to reflect the impact of the events on Mr E. It was not to punish SJP. I considered that Mr E had to chase SJP and was inconvenienced by having to do so. I also considered the events occurred over a time period of months rather than days or weeks. Based on this and the evidence presented on balance I thought an award of £400 was fair and reasonable in all the circumstances.

I proposed a basis for redress set out below.

I proposed to uphold this complaint.

I proposed to direct that St James's Place UK plc should within 30 days of this service informing it that Mr E had accepted this decision:-

1. Pay Mr E £400 for distress and inconvenience caused, to the extent that it had not already made this payment to Mr E.
2. Calculate and pay to Mr E such amount as is calculated in accordance with my direction for the calculation of financial loss as set out in the 'putting things right' section of my decision.

SJP made no further comment.

Mr E said the following:-

- He did not accept the provisional decision and.
 - He said I stated that he wanted compensation for any investment loss. This was not true, his complaint to SJP was around their administration charges only. He felt that they had charged him £1000 per month for administration of his account for a period of 3 months during which time they had failed to undertake the simple task of placing his funds into drawdown. He sought a refund of 50% or £1500. Once the transfer had taken place he was more accurately able to quantify the cost of the delay as £1800, being the difference in cost between them and his new provider over a three-month period.
 - The issue of compensation for investment loss was raised by the investigator and he immediately raised his concerns that this was not what he was seeking and would be impossible to accurately calculate.
 - SJP are said to have confirmed that it had not applied any early withdrawal charges for the transfer and the ongoing advice fee for the account was 0%. The ongoing advice and fee for such was cancelled by him in December 2022 due to dissatisfaction with their service. In January 2023 he asked them to advise him when any early withdrawal fees expired as he was considering leaving them at that time. They confirmed that any such fees ceased in May 2023. He sought further confirmation of this point in April 2023 and they again assured him that all such fees ceased in May 2023. In June 2023 he

questioned why these fees were still reflected on his account and they claimed that they had made a mistake and early withdrawal fees would in fact continue to be payable until May 2024. After a further three months of arguing they eventually agreed that these would be waived. All of this was agreed before he asked them to place his funds into drawdown so prior to my complaint.

- SJP had said that the delayed crystallisation did not cause a loss. They had no way of knowing this as they agreed that they caused a delay in the transfer to his new provider and therefore delayed his investment with them. They had said that he remained in cash for some time. Not true. He attached a letter from his new provider advising that they received funds from SJP on 6 February and confirmation that they invested the funds for him on 7 February. Any time that his investment was held in cash is therefore wholly attributable to SJP.

Loss due to delay in Transfer

- I had stated that I was looking to put him back in the position he would most likely be in but for the delay. His view remained that this was not possible. He had provided evidence from his new provider that the global economic market changed significantly whilst the transfer was delayed. This was to demonstrate that the delay caused a change in his investment decisions so the proposed recalculation was not appropriate. I had wrongly assumed that his risk appetite changed during this time because he changed the portfolio mix between bonds and shares. I would be aware that gilt prices vary significantly according to market expectations particularly on interest rates. The report from his Financial Advisor in January confirmed that the market had moved since September and was then expecting interest rate cuts as inflationary pressures reduced. Gilts / bonds are not without risk however changing a portfolio mix between them and shares can be achieved without altering the overall risk profile of a portfolio. Given the time delay of three months and the scale of economic changes within that period it seemed highly unlikely that any financial advisor would give the same investment advice at the beginning and end. Regrettably his advisor had been unable to confirm this in writing as professionally he could not make any retrospective comment on advice.
- The investigator accepted that his choices would have differed in September than in January but then assumed that he would have moved his investment at some point between the two dates to reflect the January decision. This was totally unfair, it was unreasonable to say that he would have invested in different products in September then base a calculation for the entire period on the products that he purchased in January.
- Whilst his funds remained with SJP during the delay they were not providing any investment advice so any changes to the portfolio were at his discretion and they had no influence on whether the portfolio gained or lost money during the enforced additional three months that they held his account.
- He reiterated that he did not accept my preliminary findings and said the report contains incorrect information that should not be published and SJP had made false claims regarding his fund being held as cash by his new provider.

- He sent a copy confirmation of receipt of the transfer funds and part of a contract note from his new provider.

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 have considered what Mr E has said and comment as follows:-

- I note that Mr E wishes his loss to be quantified by reference to the higher charges paid to SJP only and did not request investment loss. This is rather than the basis I proposed which measures if there has been financial loss overall including investment returns. This is not something that he wants. As I explained in my provisional decision I can make an award for financial loss but that needs to reflect both the charges and investment returns. It would not be fair or reasonable to make a direction solely about charges as this could put Mr E in a better position than he would have been but for the delay. If the investment returns achieved pre and post transfer are broadly similar the amount of the award will in any event reflect the difference in charges between the two providers.
- This service twice asked SJP if it would like to settle the claim solely on the basis Mr E requested by paying the difference in the charges, but it declined to do so. For those reasons I cannot make the direction that Mr E would prefer and I think the proposed basis for measuring loss is fair and reasonable in the circumstances for the reasons given.
- While Mr E may wish only to receive an award for the difference in the charges it is not the purpose of this service to give Mr E what he has asked for but to reach a decision that is fair and reasonable to both parties. In my view this decision achieves this for all the reasons given above.
- It is noted the Mr E feels it is impossible to put him back in the position he would have been in and to calculate the loss as he thought his investments would have been different at the earlier date. I agree it is not possible to exactly match what would have happened. But what is proposed is in my view fair and reasonable to get Mr E as close as possible for the reasons set out in my provisional decision.
- It is noted Mr E has provided further evidence he says shows that he invested all of the money transferred on the day after transfer. He did not provide a copy of the contract note originally supplied in an incomplete form. He instead supplied a copy of the transactions in his account showing purchases on 7 February 2024. This does seem to indicate that there was no delay in investment and no interim period in cash. SJP will need to liaise with Mr E's new provider to establish what investments were purchased and to reflect those in its calculation of loss.
- I note also his comments that SJP could not know that the delay in crystallising would not cause a loss. I commented on this in my provisional decision. I noted that as his money remained invested during the delay period the move into crystallisation didn't affect his investments. But the delay added to the overall delay and therefore potentially created a loss. This is reflected in the redress calculation by assuming the transfer would have taken place at an earlier date.

- In my decision I indicated that Mr E had made a change in his risk appetite during the period of delay. I accept that is not the best way to describe what happened. But what is factually correct is that Mr E had changed his view during the delay period and now wished to invest 75% in shares and 25% in bonds. Further his adviser would not comment on what investments he retrospectively might have advised at the time. So it is impossible to know. Further no specific investment advice was issued at the time and had he transferred at the earlier date he would still have needed to take time to get that advice and investment would not therefore have been immediate upon transfer. For those reasons I remain of the view that the approach taken is fair and reasonable.
- Mr E also objected to my comment in the putting things right section that he would have invested in the same funds had the transfer taken place earlier. He said this was not correct. However that section makes an *assumption* about how he would have invested for the purposes of the loss calculation. It is not a statement of fact about what he would actually have done. I say that as we know it is not possible to establish that.
- I note his comments about SJP waiving its early withdrawal fees due to events prior to this complaint. It does not affect my overall conclusions.

Putting things right

Putting things right - Redress

My aim in awarding fair compensation is to put Mr E as closely as possible into the position he would likely have been in, had it not been for SJP's error. It is not possible to exactly match the position for the reasons given.

I have assumed for these purposes that this means:-

- the crystallisation would have completed by 28 September 2023.
- He would have transferred into cash on 10 November and transferred to his new provider by 20 November 2023 and
- then later he would have invested his funds with them in the same investments as he did when he actually transferred in early 2024.

Any loss Mr E has suffered should be determined by obtaining the *notional value* of the pension from the new provider using the funds Mr E was later put into following the transfer and using the value of the pension had the crystallisation, encashment and transfer been completed on the dates I have set out above.

The time it took between the cash being transferred and the investments made with the new provider should be added on to the calculation date so that the date of assumed investment with the new provider reflects any delay (if any and I note that it does not seem there was any delay) between the new provider receiving the money and the date Mr E actually gave instructions to invest during which time he remained in cash.

Any withdrawals from Mr E's pension while he remained with SJP after the 10 November 2023 (and any encashment for withdrawal from the new provider) between the date the money was actually received by the new provider in 2024 and the date of calculation of the loss, should be reflected in the calculation. This should be done by deducting them from the date of withdrawal/encashment so that the amounts are no longer included in the calculation

for the purposes of calculating the current value. If it is easier it is acceptable to deduct the total of these amounts from the current value at the end of the calculation.

The *current value* of those investments at the date of calculation in accordance with this direction should then be subtracted from the notional value of the pension. If the answer is negative, there's a gain and no redress is payable.

The compensation amount should if possible be paid into Mr E'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 E as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid. If Mr E has remaining tax-free cash entitlement, 25% of the loss would be tax-free and 75% would have been taxed according to their likely income tax rate in retirement – presumed to be 40%. So making a notional reduction of 30% overall from the loss adequately reflects this.

The loss calculation set out above should take into account fees that were taken over the course of the delay and by backdating the date of crystallisation and transfer to when it should have happened, these fees wouldn't have been taken. I do not therefore need to make a separate direction about the difference in the level of fee paid to SJP compared to those that would have been paid to the new provider had the transfer occurred sooner.

My final decision

I uphold this complaint.

I direct that St James's Place UK plc should within 30 days of this service informing it that Mr E has accepted my decision:-

1. Calculate and pay to Mr E the amount of any financial loss in accordance with the 'putting things right' section above and
2. Pay Mr E £400 for distress and inconvenience to the extent that it has not already done so..

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 22 January 2025.

Colette Bewley
Ombudsman