

## The complaint

Mr J complains that Barnett Waddingham LLP ('BW') made a mistake while administering his self-invested personal pension ('SIPP') and dis-invested him from one of his holdings. He is unable to take out the same investment again as it is closed to new business. This investment paid an annual loyalty bonus, which Mr J says he has now lost out on for the next several years, due to BW's mistake.

## What happened

Mr J has a SIPP with BW. Annual account statements for the SIPP from the time of the events complained about show there were four investments held, as well as a cash account. One of the investments was a trustee investment account ('TIA') with a business I'll refer to as Firm C. This TIA was held jointly by Mr J and another party on a 50 / 50 basis. Mr J and that other party were trustees of the TIA. Mr J has provided copies of annual statements for the TIA. These show a loyalty bonus being added as unit value to the account and in a section titled 'explanation of statement' says *"The loyalty bonus provides a bonus of 0.5% per annum of the fund value of each investment, payable on the fourth anniversary and on every anniversary thereafter."*

BW says that, in June 2022, the other trustee asked to encash their 50% share of the TIA. BW says it informed Firm C that this had been requested, and that the other party's 50% share should be disinvested. BW says Firm C required the completion of relevant forms due to the value of the investment involved. BW acknowledges, when completing those forms, it made a mistake and requested the full closure of the TIA.

BW says both the other party and Mr J's funds were all dis-invested from the TIA on 13 February 2023, following the incorrect request. Firm C credited the funds to BW on 24 March 2023. But the error, Mr J's portion also being surrendered, was not immediately discovered and Mr J's share of the funds was not credited to his SIPP cash account until 27 July 2023. I've seen a statement showing £238,407.99 being credited to the cash account on that day.

I've seen emails between Mr J, his financial adviser and BW lodging a complaint about the error. Mr J's financial adviser was assisting him with the complaint at the time.

BW emailed Mr J's adviser on 29 August 2023. It said it had contacted Firm C to ask if the TIA could be re-opened, given it had been closed in error. But Firm C said this was not possible as the product was closed to new business. BW said it had logged a complaint and asked the adviser to discuss with Mr J how he wished to proceed.

Mr J sent an email to his adviser on 20 October 2023. He said he'd now read the information he'd been given about the mistake and was unhappy with the error, how long it took to be identified and that BW hadn't proposed a remedy. He went on to say *"For the moment I will keep the proceeds of the unwanted sale in my cash account which will give B&W the opportunity to propose an acceptable remedy. However I do expect to reinvest the cash and that B&W also cover the costs of any re-investment. I would also expect them to offer a substantial financial remedy reflecting the distress and aggravation caused and the potential*

*losses incurred.*” This email was forwarded on to BW by Mr J’s adviser.

On 13 November 2023, BW responded to Mr J’s adviser. It said it was unable to advise Mr J and would be looking to the adviser to do this. It said it could offer the option of either leaving the funds in cash with BW paying interest due on the disinvested funds and covering the cost of advice about reinvestment. Or, if Mr J wanted BW to cover the loss of investment, it would require him to begin the process of reinvestment, with BW again paying for advice, within two weeks and it would not look to cover any future potential loss. It said it would not cover the loyalty bonus or pay this in perpetuity, as had been suggested.

Mr J’s adviser replied on 22 November 2023. In this reply he said Mr J didn’t want to reinvest in equity linked funds at that time. And Mr J and he thought pricing the Firm C funds ‘now’ and comparing them to the prices achieved at disinvestment was a fair way of calculating potential loss. And this meant the matter would not be open ended. But they said Mr J still thought BW should still cover the loss of the loyalty bonus and suggested they do so for ten years. The adviser went on to give information about what they would usually charge for advice.

I can see there were then emails back and forth between the adviser and BW in January and February 2024, regarding the fees the adviser would usually charge for advice. These included BW asking for a copy of the advisers’ terms of business and then requesting further evidence as these had been updated since the adviser’s working relationship with Mr J had begun.

Mr J remained unhappy that BW would not cover the loyalty bonus. His adviser said in emails to BW that this had been covering the advisers ongoing advice fee of 0.5%. But now Mr J would be billed separately, and would incur VAT, so had incurred a loss of 1.1% of the fund per year.

BW sent its final response to the complaint to the adviser on 29 February 2024. It agreed that it had made an error that had resulted in the funds being transferred from the TIA. And it reiterated, having checked, that this couldn’t be undone. But it said, between the funds being dis-invested on 13 February 2023 and Mr J’s email of 20 October 2023, saying he would be keeping the funds in his cash account, the value of the TIA had fallen slightly. Whereas it said Mr J had earned over £4,000 in interest on the funds while in the SIPP cash account. So, it didn’t think he’d incurred an investment loss. It said it would meet the cost of advice for selecting a new investment, if taken within six months. And it offered Mr J £1,000 for the inconvenience caused.

It is worth noting that since the error took place, and funds were moved to the SIPP cash account, Mr J has taken ad-hoc income payments (including £20,000 in February 2024, £50,000 in April 2024 and £30,000 in September 2024).

Mr J asked our Service to consider the complaint. He noted he’d taken income from the funds after they moved to the SIPP cash account. And he said his intention was always to take income from the pension in the time since the error. But, because of the loyalty bonus he says the TIA would’ve been the last investment from the SIPP that he’d have surrendered. So, he would still have received the loyalty bonus for several years. And he thought it was reasonable therefore that BW should pay him the bonus for the next seven to ten years.

BW said it believed the adviser was mistaken that Mr J had incurred a loss of both the loyalty bonus and the adviser fee as they were offsetting and saying he’d lost both would double count the impact. It also told our Investigator, that it would honour its offer to pay Mr J the cost of advice on reinvesting the funds if he still sought to do so, provided this was done

within six months of the complaint being resolved with our Service.

An Investigator considered the complaint but said they thought BW's offer was fair. Mr J did not agree. As a result, the complaint was referred to me for a final decision.

I asked BW for clarification of some points. Most notably how it had come to the conclusion that Mr J had been paid approximately £4,000 in interest during the period that the final response quoted as this was not supported by statements.

BW confirmed that the figure of £4,000 had referred to the amount earned in the SIPP cash account from 27 July 2023 to the date of the final response, 29 February 2024. And the amount earned between July and October 2023 was less. It has also now indicated that interest wasn't paid to Mr J for the period 24 March 2023 to 27 July 2023 and it has said it will now make this up, and pay him £2,040.31 in respect of this, in addition to the £1,000 for distress and inconvenience. It maintained though that it felt 20 October 2023 was a fair point for it to stop calculating loss as this was the point that Mr J informed it he had chosen not to reinvest his funds.

I issued a provisional decision earlier this month explaining that BW had agreed it had made errors and so, I'd thought about what it should do to address this. Below are extracts from my provisional findings, which form part of my final decision.

*BW has acknowledged that it made an error that led to Mr J's share of the TIA being disinvested and that he had not asked for this. As it has accepted fault, all that is left for me to decide is what a fair way of putting things right is.*

*I think it is worth just noting that our role is to informally review and decide individual complaints. We aren't a regulator. And our awards are not intended to fine or punish a business. My intention, in deciding on a fair way to address the error made, is to look to put Mr J, as close as possible, back in the position he would've been in had BW's error not happened. But while BW has made an error at the same time, to decide what's fair, I also have to take account of whether Mr J took reasonable steps to minimise the impact of the error, after it was discovered.*

*Firstly, it appears to have now been established that a second error has been made here. BW said that it received the proceeds for Mr J's half of the TIA investment, £238,407.99, on 24 March 2023. The original mistake of the TIA being disinvested wasn't immediately recognised and these funds didn't credit his SIPP cash account until 27 July 2023. But the amount credited on that date was £238,407.99 – meaning no interest or returns had been added during that time as the amount was the same as received in March 2023. BW has now said it will pay Mr J £2,040.31 – being the interest he missed out on between those dates, which seems to confirm that this wasn't credited previously.*

*I think that offer is largely fair in respect of that specific issue. But had interest been added to the SIPP cash account between March and July 2023, when it should've been, that amount would have in turn accrued further interest from that time, to now, at the interest rate applicable on the SIPP cash account. BW hasn't confirmed at this point whether the figure it has quoted includes that additional interest. If it does include an amount reflecting lost interest since July 2023, BW should let Mr J know. And, if the figure does not include the additional potentially lost interest I've referenced, I think it would be fair that a further amount be paid to reflect that as well. In either case an explanation of the calculation should be provided to Mr J, in an easily understandable format.*

*Turning to the disinvestment itself, Firm C has confirmed that the TIA can't be reopened as it is no longer offered. So, Mr J can't go back into the investment he had. And, whatever I*

*recommend, I won't be able to put him in the position of still holding that investment.*

*I'm satisfied that Mr J would not have disinvested from the TIA at the time it happened. So, he'd have retained that investment for some time, earning returns. BW says that the value of the investments in the TIA actually fell marginally between 13 February 2023, when the funds were disinvested, and 20 October 2023. So, it says Mr J did not incur an investment loss while at the same time benefitting from interest earned on the monies whilst they were held in cash.*

*BW has used the date of 20 October 2023 as the effective cut off for its calculation as it says this was the date that Mr J decided not to take advice or to reinvest. And it essentially says he hasn't mitigated his losses from that point. I do agree that it wouldn't be fair for BW to be responsible for losses on an open-ended basis. And I do think there was a point where it was fair and reasonable to say that BW's responsibility for investment losses should be capped. But I don't agree with BW that 20 October 2023 was that date.*

*The email it has referred to on that date, which I've quoted above, does say that Mr J will keep the funds in cash. But in my view, he was clear at that point this was temporary, given Mr J said he would do so "for the moment". And the reason why was to give BW "the opportunity to propose an acceptable remedy". In other words, to give BW the chance to find a way of putting things right – which it hadn't proposed at that time. Mr J said he did expect to reinvest the funds. So, I don't agree with BW that this email represented Mr J taking the decision or refusing to reinvest because of the error. Rather he was waiting, as part of the complaint process, for BW to explain what it could do to assist. Which I don't think is unreasonable.*

*BW did then propose two potential solutions in its email of 13 November 2023. Both involved it covering the cost of advice to reinvest – which I think was a fair suggestion. Effectively this said if Mr J wanted BW to cover his investment loss he needed to act within two weeks, otherwise BW would only pay interest in line with the SIPP cash account. And by this point, it had also confirmed that returning to the original investment had been ruled out by Firm C.*

*I don't agree it was fair for BW to dictate whether it covered the investment loss at all, based on Mr J adhering to its timeline. It was at fault for the funds being disinvested. If it hadn't made a mistake, I'm satisfied Mr J would likely have remained invested in the TIA. And so, I think BW is responsible for his investment losses, if there were any, stemming from that mistake. But I don't think it was unreasonable for BW to make the case for setting a definitive timeline or end date. Because, while it was at fault, I don't think it was fair to expect it to cover any potential losses on an open-ended basis, particularly once it had been established that simply reopening the previous investment wasn't possible.*

*In Mr J's adviser's email of 22 November 2023, in response to what BW had said, they said they and Mr J agreed that a fair way of calculating investment loss was to make a comparison at that time, so the matter was not open ended. And the adviser said Mr J was still not looking to reinvest in equity linked funds at that point – which was after a proposal on how to put things right had been made. So, the circumstances and Mr J's knowledge were different at that point. And I think this statement therefore carried more weight at that time.*

*I appreciate that the emails indicate the matter of advice costs, the loyalty bonus and a payment for trouble and upset remained open for discussion at that time. And I know this formed part of Mr J's overall complaint. But I don't think the complaint had to be fully resolved for the liability for investment losses to be concluded. Mr J had the right to continue with his complaint about the other points (and to bring it to our service), which could take time. But at the same time, he knew that he could not be reinvested in the TIA, the funds were held in cash, he had the option to reinvest and BW had said it would cover the cost of*

*taking advice about this. And he'd agreed calculating losses to that point was fair. So, at present I think in terms of investment loss, it would be fair to treat that date, 22 November 2023, as the point to which BW should cover any losses incurred (taking into account the interest Mr J has received).*

*Mr J has argued that, separately, BW should compensate him for the loss of the loyalty bonus for several years. Indeed, he has said that this is the main focus of his complaint. Mr J says, although he would always have drawn income from the pension, he wouldn't have disinvested from Firm C to fund this and would instead have used his other investments first, because of the loyalty bonus.*

*I appreciate Mr J feels strongly about this. But I don't agree that it would be fair for BW to compensate him for the loss of the loyalty bonus moving forward. Notwithstanding that some of the information I've been provided appears to show that at least two of his other investments also provide a loyalty bonus, ultimately it isn't possible to predict how long he'd have retained the Firm C investment for, were it not for the error by BW. I appreciate he believes he'd have kept this for some time. Based on how much he is drawing from the pension and the value of the investments as a whole, but circumstances can and do change.*

*Moreover, although I know Mr J disagrees somewhat, the loyalty bonus was a part of the returns that the investment with Firm C provided. I accept it was different to standard investment returns to an extent, as it appears the bonus was to be paid yearly regardless of performance. But it was ultimately part of the returns the investment provided as a whole.*

*Mr J can't be returned to that investment. How long he'd have received the bonus for is unknown and wasn't guaranteed. BW can't advise him about alternatives so, it said it would cover the cost of him seeking advice to reinvest and mitigate that loss. As I've already explained, I don't think it is fair to hold BW responsible for the investment returns on an open-ended basis. So, overall, I think it is reasonable to cap BW's responsibility for any lost loyalty bonus at the same point as the investment returns.*

*BW said, when responding to the complaint, it would cover the reasonable cost of advice to reinvest the funds disinvested in error. I think that was a reasonable offer. Mr J is unlikely to have incurred advice charges but for its error. So, paying for this, meant he was not in a worse position than he would otherwise have been.*

*I understand BW told our Investigator that it would still look to honour this part of its proposed settlement, provided advice was taken within six months of the matter being resolved with our service. It hasn't suggested since that this offer has been withdrawn. But for the avoidance of doubt, I think BW should pay reasonable advice costs Mr J incurs, should he choose to take advice about investing the proceeds of the erroneous disinvestment which are now held in his SIPP cash account. But I think it is reasonable that this is dependent on that advice being sought within six months of the date of my decision.*

*I do appreciate that this may now be moot, given the income that Mr J has taken from the SIPP cash account. But ultimately BW covering fees incurred is a fair resolution in my view.*

*Lastly, BW said it would pay Mr J £1,000 for the distress and inconvenience caused. Again, our role isn't to fine or punish BW for its error, as we aren't a regulator. Rather it is to take into account the trouble and upset its error has caused.*

*I can see that Mr J feels strongly about this complaint. And I also understand that the error has meant how his pension has been operated over the past couple of years has not been in line with what he initially planned. But at the same time, his access to the pension hasn't been impacted and the SIPP statements show that his other investments have continued to*

*benefit from growth. And he had the option to reinvest the funds, with BW offering to pay for the relevant advice. So, while I don't doubt the situation has been frustrating for him, in the circumstances, and taking into account the information about what we might recommend for distress and inconvenience in certain circumstances which we publish on our website, I think BW's offer is fair and reasonable, in the circumstances.*

### **Responses to my provisional decision**

I gave both parties an opportunity to make further comments or send further information before I reached my final decision.

Mr J didn't respond to my provisional decision.

BW said it accepted my provisional findings. It confirmed that interest which would have been earned on the amount of £2,040.31 had it credited the pension cash account when it should have (between March and July 2023) hadn't yet been calculated. But it said it would calculate this as I'd directed and would send Mr J a breakdown of the calculation.

### **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 as neither party has provided anything disputing or arguing against them, I see no reason to depart from my provisional findings.

BW has acknowledged that it made an error, and I think it should take action to put things right, including calculating if Mr J has incurred an investment loss. But for the reasons I've explained, I think it is fair and reasonable that its responsibility for investment losses, including the loyalty bonus the former investment was paying, be capped on 22 November 2023.

I think the remaining remedies BW has proposed to resolve matters are largely fair. Paying for the cost of advice about potential reinvestment, providing this is taken within six months, and the offer of a payment for distress and inconvenience are in my view fair. And I think that it is fair that BW pays the interest (at the rate payable on the SIPP cash account) that Mr J lost out on between March and July 2023, provided it also calculates and pays the further interest that would have been earned on this amount. At the same time, I also think it is fair that this interest amount be taken into consideration when calculating whether there was an investment loss.

### **Putting things right**

BW has accepted that it was at fault and made errors here. Without those errors I don't think Mr J's investment with Firm C would have been surrendered when it was. To put things right, BW should;

- Pay Mr J the interest of £2,040.31 that it has recently said it would – representing interest 'lost' or not paid, on the sum that was disinvested between the point BW received these funds on 24 March 2023 and this being credited to Mr J's SIPP cash account on 27 July 2023.
- Calculate and pay Mr J the interest that would have been accrued on the amount of £2,040.31 in the SIPP cash account from 27 July 2023 to the date of my decision.

- Provide Mr J a calculation to demonstrate how the above amount(s) were worked out.
- Separately, complete a calculation comparing the amount Mr J's investments with Firm C were worth when they were disinvested on 13 February 2023, with how much they would have been worth had they remained invested with Firm C until 22 November 2023. If the amount that the investment would have been worth on 22 November 2023 is greater, then Mr J has incurred an investment loss.
- If Mr J has incurred an investment loss, BW should compensate him for that loss. However, it is fair that the interest that he has earned from the SIPP cash account from 13 February 2023 to 22 November 2023 (including the amount from 24 March 2023 to 27 July 2023 which is being accounted for above) be offset against that loss. So, if the interest from the cash account exceeds the investment loss, no payment will be due. If the investment loss exceeds the interest earned, the difference, the compensation amount, should be paid to Mr J.
- The compensation amount should be paid into Mr J's pension plan if possible. 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 J as a lump sum. This amount, if paid from the pension, would have been a part of Mr J's taxable income. So, in the event a lump sum payment is made, BW should make a notional reduction to allow for future income tax that would otherwise have been paid, according to Mr J's likely income tax rate in retirement – presumed to be 20%.
- Pay Mr J £1,000, as it has previously offered, for the trouble and upset caused.
- If Mr J seeks advice on reinvesting the remaining funds in his SIPP cash account derived from the incorrect disinvestment, provided that advice is sought within six months of the date of my final decision, BW should pay Mr J an amount equivalent to the reasonable advice costs incurred. If BW requires an invoice to support these costs, if incurred, it is reasonable that payment of this amount be withheld until said invoice is provided.

### **My final decision**

For the reasons I've explained above, I uphold Mr J's complaint. To resolve matters, Barnett Waddingham LLP, should compensate Mr J in line with the 'Putting Things Right' section of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 28 July 2025.

Ben Stoker  
**Ombudsman**