

The complaint

Mr A complained that Westerby Trustee Service Limited (Westerby) made mistakes which delayed the transfer of his self-invested personal pension (SIPP) to a new provider (Provider A) which may have resulted in a financial loss.

He also complained that he was unhappy with being charged a transfer out fee of £250 + VAT and a full year's annual fee for his SIPP. He would like these fees to be waived.

What happened

I issued my provisional decision to this complaint in May 2025, parts of which are copied below and form part of this decision.

I have reviewed all the evidence provided by both parties. I have not reproduced all of this in this decision but concentrated on what I believe to be the most relevant parts.

Mr A opened a SIPP with Westerby in February 2020. In January 2024 he decided to transfer his SIPP to Provider A and contacted Provider A to ask it to request a transfer of his SIPP from Westerby. Provider A completed an origo transfer request on 22 January 2024 and submitted it to Westerby.

On 23 January 2024, Westerby acknowledged the receipt of the request and advised Mr A that he needed to complete a transfer out request form, if he had not already done so. It also required evidence of the HMRC registration of Provider A and the relevant pension guidance document.

Subsequently, on 8 February 2024 Westerby sent an internal email requesting the authority to proceed with the transfer. However, it became aware that it did not hold Mr A's up to date contact details and contacted Provider A to request these. Provider A responded to Westerby on 26 February 2024 explaining that it was unable to provide this information as it did not have Mr A's permission to disclose any information on him. It did, however, contact Mr A to ask him to contact Westerby directly to update his contact details. Mr A did so the same day.

On 27 February 2024 Westerby contacted Mr A to provide the required transfer form which needed to be completed in full, signed and returned to allow Westerby to process the transfer. Westerby also advised Mr A that he would incur a charge of £250 + VAT for transferring cash out of his SIPP.

Mr A responded the same day with the signed and completed form. He also, however, asked for the charge to be waived or reduced as he did not believe that the terms and conditions of his policy made it clear that such a charge would be applied.

Mr A emailed Westerby on 6 March 2024 to request an update on the progress of the transfer. Westerby replied on 11 March 2024 to advise Mr A that the transfer documents were being reviewed for approval by its due diligence team. It went on to say:

Due to the process itself requiring us to make sure that everything is properly checked and accounted for when transferring over the SIPP to a new provider as is standard generally with SIPP providers, we are unable to waive or lower the cost of this process.

Mr A replied to Westerby the same day confirming that he did still wish to proceed with the transfer, but he would also like to make a complaint, as he did not feel that the amount of the transfer charge was appropriate in these circumstances. Westerby responded confirming that it had raised a complaint but it went on to explain the charge is part of its standard fee structure which Mr A had agreed to when he took out the SIPP. The charges were detailed in the "signed supplemental deed". Westerby included a copy of the fee schedule and said:

Due to our need to upkeep consumer duty, we need to treat all of our clients equally, therefore we cannot charge one any more or less than the other.

Mr A responded to this email on 13 March 2024. In his email he explained that he had been in contact a former colleague who was in a similar situation, but for whom Westerby had agreed to waive both the £250 transfer fee and the annual fee. He went on to say that he consequently considered that he wasn't being treated fairly by Westerby.

Westerby contacted Mr A once more on 30 April 2024 to advise him that it had still not received completed transfer documents. Mr A once again responded the same day to confirm that the documents had been completed and returned on 27 February 2024. He also queried why the transfer was taking so long to complete.

On 1 May 2024 Westerby contacted Mr A once more to confirm that it was waiting for a document from Provider A regarding HMRC approval. Westerby contacted Provider A again on 8 May 2024 to seek this document.

Westerby sent its response to M A's complaint on 10 May 2024. It did not uphold the majority of his complaint points.

In terms of the fees that Westerby has charged Mr A, it noted that Mr A had been advised by an Independent Financial Adviser (IFA) to open his SIPP with Westerby. It concluded therefore that:

As you were advised, your financial adviser held the responsibility of ensuring the product you were opening, including the terms, conditions and fees associated.

It went on to state that it sent all SIPP members with a copy of the SIPP fee schedule on an annual basis. It noted that Mr A had therefore been sent a fee schedule in the years 2019 to 2023 inclusive and so did not uphold this complaint point.

In terms of the annual fees he had been charged, Westerby noted that Mr A considered the charge he incurred for 2024 to be excessive. It did not uphold this point either, saying:

Whilst we recognise that you may not 'see' much of the works we do for your scheme, we confirm that a large amount of regulatory works is carried out 'behind the scenes' to ensure that your pension scheme is registered and maintained.

The third point Westerby addressed was the transfer process itself.

Westerby noted that Mr A had initially instructed Provider A to request the transfer via origo before contacting Westerby itself. It explained that it needed to have a completed and signed transfer form from Mr A before it could complete the transfer as the benefits were held with an entity that was not part of the origo system.

Westerby went on to note that this caused a delay as it became aware that it did not hold Mr A's current contact details to send him the necessary form and had to approach Provider A for these.

The next stage of the process was that Westerby was required to undertake specific checks before completing a transfer request, which formed part of its due diligence process. These checks were carried out by a Technical Consultant employed by Westerby. It explained that Mr A's request was referred to the technical consultant on 11 March 2024 but was not approved by them until 18 April 2024.

Westerby upheld this part of Mr A's complaint acknowledging that there was a delay caused by its technical consultant not carrying out the required checks in a timely manner. As a result, it offered to waive the transfer fee of £250 + VAT, by way of apology.

Mr A's transfer to Provider A was completed on 22 May 2024.

Mr A was unhappy with Westerby's response to his complaint and so brought it to this service.

Our investigator reviewed all the evidence in this case and formed the view that Westerby had caused a delay to Mr A's transfer but did not believe that the compensation it had offered him was appropriate. They considered that Westerby could have completed the transfer by 18 April 2024 and so should carry out a loss calculation to see if the delay had caused Mr A to suffer a financial loss.

Mr A replied to our investigator to say that if the transfer had been completed on time he would not have been liable for an additional annual fee for the financial year 2024/25. Westerby subsequently offered to pay Mr A a further sum of c£125 in respect of the time he remained a client - a period of 43 days – after the transfer should have completed.

Mr A remained unhappy with this offer, suggesting instead that any refund of the annual fees for 2024/25 be based on the period during which he ceased to be a client of Westerby, that is from 22 May 2024 until 5 April 2025.

As a result, the complaint has been passed to me to make a decision.

Mr A responded to my provisional decision to say that he accepted it. He also provided some information on the fund that his SIPP had been invested in to assist Westerby in undertaking the redress calculation. Westerby did not respond to my provisional decision and so I will now make my final decision.

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 have reached the same conclusion as our Investigator and uphold Mr A's complaint.

I will explain now how I have reached my conclusions.

Firstly, I think it's important to reflect upon the role of this Service. Our role is to impartially review the circumstances of a complaint and make a decision on whether a business has made errors or treated a customer unfairly. Where it has, we expect a business to fairly

compensate a customer for any financial loss and distress and inconvenience they have suffered as a result.

In the circumstances of this case I need to determine the answer to two different questions. The first is if Westerby caused an avoidable delay to Mr A's pension transfer and the second if it has treated him fairly in relation to the fees it has charged him.

I'll consider first the issue of the delay to the pension transfer. It's clear from the evidence provided that Provider A sent an origo request form to Westerby on 22 January 2024. As part of the transfer process, Westerby required Mr A to complete and sign some transfer forms. As these forms were required by Westerby as part of its regulatory process to ensure that the transfer request was legitimate, I can't see that it did anything wrong by asking Mr A to complete these.

I can also see that Westerby became aware on 8 February 2024 that it did not hold current contact details for Mr A. Westerby then approached Provider A to ask it to provide these details so it could send him the required forms. As it was Mr A's responsibility to ensure that he provided Westerby with up to date contact details, I don't think it's fair and reasonable to hold it responsible for the element of the delay to the transfer that was caused by the forms not being returned by Mr A until 27 February 2024.

The next stage of the process was for Westerby to undertake various aspects of due diligence. This required the completed forms and other information to be reviewed by a technical specialist employed by Westerby. This information was passed to the specialist on 11 March 2024, but the work was not completed until 18 April 2024. I consider this length of time to be longer than I would expect is required for this stage of the process and so that Westerby is responsible for causing an undue delay at this point.

In terms of the length of this delay, I think it's fair to assume that the due diligence could have been completed within 10 working days, i.e. by 26 March 2024 at the latest. Consequently, I find that Westerby is responsible for a delay of 16 working days at this point.

I also find that it is reasonable to assume that there were no further delays caused by Westerby, as it was waiting for information from Provider A that it had originally asked for earlier in the process, specifically the HMRC approval relating to the new pension scheme, Provider A.

I find, therefore that the transfer should have completed on 29 April 2024 and Westerby should use this date to undertake a financial loss calculation to see if Mr A has suffered a financial loss as a result of this delay.

I will turn now to look at the fees Mr A has been charged by Westerby.

Firstly, I'll consider the £250 + VAT transfer fee he should have been charged for transferring away from Westerby. In terms of the approach this service takes toward charges, it considers that they should be clearly identified and the customer made aware of them. I can see from the evidence that Westerby made Mr A aware of the scope of the transfer charges and the transfer fee on a number of occasions, starting with the initial SIPP application, annually afterwards and also in its communication with him on 27 February 2024.

While this is true, I also have to consider whether these charges represent fair value for the services provided – and I am not convinced that they are in the circumstances of this case. As Mr A pointed out, the majority of his benefits were held in a cash deposit with a single UK

bank, so in this case I can't see that this level of charge would be justified. Consequently, I'm glad to see that Westerby has waived this charge for Mr A's transfer.

Looking now at the annual fees that Mr S has been charged on his SIPP, the approach this service takes is similar to that for the transfer fees above, but we would also expect that the fees charged are for activities that have actually taken place. While I appreciate that the terms and conditions of Mr A's Westerby SIPP are that annual fees are paid in advance and do not allow for in year refunds, I do not consider that this is fair and reasonable in the circumstances of this case. Mr A was a client of Westerby's for less than one month and was charged fees for a full year. On balance, I find Mr A's argument that he should only pay those charges which relate to the time he remained a client of Westerby's, rather than for the period he was no longer a client, to be appropriate. I find, therefore, that Westerby should refund the majority of the annual fees Mr A was charged in respect of the year 2024/25, from 22 May 2024 to 5 April 2025.

The final issue I must consider is whether an additional payment in respect of the distress and inconvenience Mr A was caused by Westerby's delay in transferring his benefits to Scheme A. I've considered the guidelines issued by this service and feel that a payment of £150 in respect of Mr A's distress and inconvenience is appropriate in the circumstances of this complaint.

Putting things right

It is my intention and the aim of this Service that any compensation for financial loss should seek to put Mr A back into the position he would have been in were it not for the delay caused by Westerby.

To compensate Mr A fairly, Westerby must:

- Compare the notional number of units Mr A's funds would have bought with Provider A if the transfer had completed on 29 April 2024 with the amount actually purchased following the transfer of funds on 22 May 2024.

To calculate the notional number of units that could have been purchased, Westerby will need to approach Provider A for the necessary information.

For the purposes of this calculation, the notional investments must be those Mr A actually invested his benefits into and at the same time. By that, I mean if purchases were made five days post 22 May 2024, the valuation should consider that investment was made five days after notional transfer date of 29 April 2024.

If the notional number of units is greater than the actual value, there is a loss and compensation is payable.

- If there is a loss, Westerby should transfer an amount into Mr A's pension with Provider A to purchase the number of additional units required. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

If Westerby is unable to obtain the necessary information from Provider A, it should contact Mr A to seek his assistance in obtaining it. If the information is still not available, Westerby should use the FTSE UK Private Investors Income **Total Return** index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) to calculate any financial loss. This index is made up of a range of indices with different asset classes,

mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.

Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr A's circumstances and risk attitude.

- If Westerby is unable to pay the compensation into Mr A's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr A won't be able to reclaim any of the reduction after compensation is paid.
- The notional allowance should be calculated using Mr A's actual or expected marginal rate of tax at his selected retirement age.
- It's reasonable to assume that Mr A is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr A would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.
- Refund to Mr A the sum equal to the annual fee paid him for the period from 22 May 2024 to 5 April 2025 if it has not already done so. Westerby should add interest to this amount at the rate of 8% per annum simple from the date it applied the charge until the date of settlement. This is to compensate Mr A for the delay in receiving his funds caused by Westerby. If Westerby has already made any payment in respect of refunding any portion of the annual fees for this year, this should be taken into account in this calculation.
- Waive the £250+VAT fee that Mr A was due to pay in respect of the transfer.
- Pay Mr A the sum of £150 in respect of the distress and inconvenience he has been caused.
- Provide details of all calculations to Mr A in a simple, easy to understand format.

Income tax may be payable on any interest paid. If Westerby deducts income tax from the interest, it should tell Mr A how much has been taken off. Westerby should give Mr A a tax deduction certificate in respect of interest if Mr A asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

My final decision

For the reasons given above, I uphold Mr A's complaint.

Westerby Trustee Services Limited should pay Mr A the sums calculated above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 14 July 2025.

Bill Catchpole

Ombudsman