

## **complaint**

Mr W's complaint is about the time taken to transfer his self-invested personal (SIPP) from his existing provider to a new SIPP provider and the delay in accessing his pension benefits, in particular his pension commencement lump sum (PCLS). Mr W's SIPP held a commercial property which was subject to a mortgage with Lloyds Bank Plc.

## **background**

I issued a provisional decision on 21 April 2020. I've attached it and it forms part of this decision. Essentially I said Lloyd's offer of £6,115 was fair and reasonable for the reasons I set out. But I said Lloyds should also pay Mr W an extra £1,000 as compensation for distress and inconvenience.

Lloyds accepted that – it had earlier offered £1,000 for distress and inconvenience and it also remained agreeable to the payment of £6,115 based on three months interest at 8% on the PCLS.

Mr W asked me to reconsider. He confirmed his property purchase was already underway by the time he needed to tell his existing SIPP provider if he didn't consent to the transfer to the new provider. But the point wasn't that he had time to make other arrangements. There wouldn't have been a problem if the transfer had been completed within a reasonable time, even allowing for some delay.

Mr W explained that he didn't know what the build costs for the new house would be. Various site tests were undertaken and a quantity surveyor had been appointed to cost the build options. Mr W requested the PCLS at the end of January 2016 as he wanted to submit a planning application, detailing the house size and construction. The amount of money available directly impacted on that and the timing of the planning application. Mr W needed the PCLS to help fund the project. He needed to know how much he had to spend so the planning application was delayed until June 2016. He'd been told then by all parties that he'd get the PCLS in September 2016.

Focusing on a claim for interest for late payment Mr W calculated he should have received a PCLS of £300,468.83 on 31 March 2016 (that's after making an allowance for the increase in value he gained because the fund stayed invested). Interest at 8% (£24,037.48 a year or £2,003.12 a month) meant total interest of £22,725 was due. Taking into account the investment gain and the compensation I'd suggested left a shortfall of £13,997.83 plus distress and inconvenience. There was a long delay, responsibility for which should be met between the parties involved.

He added that the situation wasn't of his making - it was due to his existing SIPP provider withdrawing from the SIPP market. Being given the chance to opt out was only slightly better than given no choice at all. If he'd been asked to opt in then that would have given a clear message that he understood and accepted the implications. Opting out required a lot of knowledge about a specialist area.

I'd said that SIPP providers weren't expected to '*second guess*' a mortgagee's requirements, but it was entirely reasonable to expect them to have adequate knowledge of the processes involved and not assume that novation would be acceptable to a lender and that the lender would consent to novating the loan. That demonstrated inadequate knowledge of their specialist fields.

The information provided did say the transfer could take some time and that requesting a PCLS after the transfer process had started would delay the transfer. But that was vague. It could be assumed the delay might be anything from a few days to a few weeks. Mr W had applied for the PCLS in January 2016 expecting to receive it by the end of March 2016. His existing SIPP provider had said it usually quoted a timescale of between one and six months. Instead the transfer had taken about seventeen months.

### **my findings**

I've considered all the available evidence and arguments again to decide what's fair and reasonable in the circumstances of this complaint.

I considered in my (attached) provisional decision the impact of the delayed payment of the PCLS on Mr W's building project. Essentially I said planning permission had been applied for in June 2016 and granted in September 2016. But work hadn't commenced until late November 2017. So it seemed his building project hadn't been delayed by the fact that the PCLS (or the bulk of it at least) wasn't paid until January 2017.

It seems from what Mr W has more recently said that he wanted the certainty and security of the PCLS actually having been paid before deciding on the final design and build options and the costs before submitting a planning application. I can understand why Mr W may have perhaps felt more comfortable in waiting until the PCLS had been paid or was, so he was told, fairly imminent. But I think that was his decision. Building costs are generally only estimates. I think Mr W would have known, as far as possible, the expected cost of the various options. And he knew what his PCLS was likely to be, or he could have asked for an up to date estimate. I don't think it would be reasonable to say the fact that the PCLS hadn't actually been paid stopped him moving forward with his building project when he knew the amount of the PCLS that was available and which would be paid eventually.

Mr W's suggested, rather than looking at whether he suffered extra expense because his building project was delayed, we should look at a claim for interest at 8% on the basis he was kept out of his PCLS.

I've also considered Mr W's interest calculations. But they are based on the assumption that he applied for his PCLS in January 2016 and it had been paid in March 2016. I don't think that sort of timescale, given the commercial property held in the SIPP, was realistic. So I can't agree with Mr W is entitled to interest for delayed payment from March 2016.

As I've acknowledged there was a considerable delay in completing the transfer. But sometimes a transaction will turn out to be particularly complex and take more time than could have been anticipated. But that won't always mean that one or more of the parties involved must have been at fault. Or that all of the delays could have been avoided. It's also the case that Mr W's fund remained invested throughout and so, as he's acknowledged, he benefited from investment growth throughout the period of the delay.

I don't think Lloyds dealt with the matter as well or as quickly as it could have done. But I think what's been offered, based on three months' interest, plus a further £1,000 for distress and inconvenience, is fair and reasonable. So I'm not going to say that Lloyds should pay more.

**my final decision**

I uphold the complaint. Lloyds Bank Plc must pay Mr W £6,115 as compensation for financial loss plus a further £1,000 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 4 July 2020.

Lesley Stead  
**ombudsman**

*PROVISIONAL DECISION dated 21 April 2020*

**complaint**

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**background**

*Mr W's existing SIPP provider wrote to its SIPP customers in July 2015 to tell them its third party SIPP administrator had decided to withdraw from the SIPP market. Mr W's SIPP provider had decided not to find another third party administrator. If the value of the self invested assets held in the SIPP was over £1,000 they'd be transferred to a new SIPP with a new SIPP provider. The insured funds could stay with the existing provider (unless their value was less than £1,000).*

*Customers who agreed to the transfer didn't have to do anything. Those who wanted to opt out needed to tell the existing provider by 28 September 2015. If it didn't hear by then it would go ahead and begin the transfer of the self invested assets to the new provider in October 2015.*

*The information provided said the transfer could take some time. And, if a PCLS was requested, that might delay matters. A property transfer guide was supplied. Amongst other things, it explained the outgoing administrator and the new SIPP provider had 'agreed a streamlined process for property transfers'. Solicitors would be jointly instructed. If there was a mortgage in place, a novation agreement would be used, where possible, to transfer the existing mortgage to the new SIPP provider.*

*Mr W didn't opt out. As I've said his SIPP contained a commercial property so that had to be transferred to the new SIPP. The property was subject to a mortgage with Lloyds. In November 2015 the outgoing administrator asked Lloyds to commence the novation process of the loan. Unfortunately the re-registration of the loan to the new SIPP provider was protracted and this delayed the transfer of the commercial property to the new provider.*

*Towards the end of January 2016 Mr W wanted his PCLS to be paid. The new SIPP provider paid Mr W the first tranche of his PCLS £249,081 in January 2017. The property transfer and new loan completed in March 2017. The new SIPP provider paid the balance of the PCLS on 16 August 2017.*

*By then Mr W had complained about the time it was taking to complete the SIPP transfer. Lloyds wrote to him on 22 June 2017, acknowledging the delays. Lloyds said it was first contacted in late November 2015 about the transfer. The transfer wasn't straightforward and the procedure was complex. There were delays in receiving the original loan information.*

*Lloyds apologised and offered £1,000 in recognition of the trouble and upset caused. Lloyds later increased its offer to £6,115. This offer was based on 8% interest on £300,000 for 93 days' delay.*

*The adjudicator upheld the complaint. He didn't think Lloyds had taken sufficient account of the substantial inconvenience Mr W had suffered because it had taken almost 17 months to transfer the property. He thought Lloyds could have managed Mr W's expectations better. The adjudicator suggested Lloyds should pay Mr W additional compensation of £500.*

*Lloyds didn't accept the adjudicator's view. Lloyds said Mr W had rejected the initial offer for distress and inconvenience of £1,000. In his discussions with Lloyds Mr W brought up the delay which was acknowledged and the interest offered was in settlement of the distress and inconvenience caused.*

*Mr W also remained unhappy. He said the whole thing caused him and his wife considerable distress. In November 2015 they'd purchased an old bungalow, intending to demolish it and build a new house.*

*The majority of the build cost was to be paid for by the PCLS which Mr W applied for in January 2016. He was unable to access the major part of it until late January 2017. He couldn't start the work until after then and so there was a delay in completing the build. Mr W said he could have received a monthly rental income of £4,000 for the new house and because of the delay he'd incurred a loss of £30,800.*

*He later said the delay meant he couldn't move into the property as soon as he'd planned and so he and his wife had to stay in rental accommodation longer than they'd budgeted for at a total extra cost of £17,000.*

*Mr W said his understanding was that if someone was unable to access money that was his, he should get interest at 8% above Bank of England base rate. Mr W said he'd asked for his PCLS (about £305,000) on 26 January 2016. He'd been paid £249,081 on 12 January 2017, 352 days after he'd applied. And a further £54,000 on 16 August 2017, 568 days after applying. It shouldn't take more than 28 days to access his money. Allowing for that and applying interest at 8.5% was £18,793.67 on the first payment and £6,790.68 on the second, in total £25,584.35.*

*Mr W has said he'd settle for £25,584.35 for not having access to his money and a further £17,000 for the extra rent he'd had to pay. He said he wasn't qualified on how that should be apportioned between the parties he'd complained about.*

### **my provisional findings**

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*I sympathise with Mr W that, following his existing provider's decision to withdraw from this sector of the market, Mr W had to transfer his SIPP to a new provider. Mr W didn't instigate the transfer and the timing was particularly inconvenient for him given his property purchase and his need to access his PCLS to fund his building project.*

*A further issue is that, although the whole process was instigated by Mr W's existing provider, a number of other parties were involved in the transfer. Mr W has complained not just about Lloyds but also about his existing and new SIPP providers. We've dealt with those complaints under separate references. But we've considered all three complaints together.*

*Mr W is also critical of the solicitors acting for Lloyds and the existing SIPP provider. The solicitors aren't strictly within our jurisdiction but I've treated them as agents for the parties they were acting for. I haven't looked separately at the solicitors' part in the matter.*

*I don't think there's any dispute that the transfer took much longer than Mr W or any of the other parties involved anticipated. I accept the transfer wasn't straightforward. The SIPP held a commercial property subject to a loan. I think it was always likely that would cause some issues. At the outset a relatively simple loan novation was anticipated. But it seems that wasn't possible and a new loan agreement had to be set up.*

*Lloyds didn't appear to realise that until sometime after the transfer had begun - Lloyds didn't tell the new SIPP provider until 28 April 2016, some six months after the process had started, that the existing loan would need to be discharged and a fresh loan agreement entered into.*

*From what I've seen, there were delays on Lloyds' part throughout the process. On several occasions Lloyds failed to revert promptly, or within the timescale promised, to other parties involved with updates or revised or new documentation. Lloyds also requested information it already held and failed to manage expectations by indicating, more than once, that the process was nearing completion when that wasn't the case.*

*Lloyds accepts there were shortcomings in how it handled things. Lloyds has made an offer. So I've concentrated on whether that offer is fair and reasonable in the circumstances.*

*Mr W's claim centres on the delay in paying his PCLS. He'd earmarked that for a building project which was in turn delayed and meant that he lost rental income or had to pay extra rent. Lloyds wasn't responsible for paying Mr W's PCLS. That was down to Mr W's SIPP provider. I've dealt elsewhere with how his existing and new SIPP providers dealt with the payment of Mr W's PCLS.*

*But I recognise that delay on Lloyds' part would have a 'knock on' effect and delay the process overall, including the payment of Mr W's PCLS. I think Lloyds recognised that, hence its (revised) offer to make a payment to Mr W of about three months' interest on £300,000 (roughly the amount of his PCLS).*

*Mr W's claim for interest is for more than that. First, he's used a higher rate of interest - 8.5% pa. That's bank base rate (say 0.5% throughout the period in question) plus 8% which is the rate used by the courts for judgment debts. But if we award interest for late payment we generally just use 8%. We might use bank base rate in certain circumstances instead but we wouldn't generally use a combination. And 8% is the rate used by Lloyds in making its offer of £6,115 to Mr W.*

*Secondly, Mr W's claim is for a longer period than three months late payment. I've looked into what happened with Mr W's building project and if the late payment of his PCLS delayed things. I understand he bought the property in about November 2015. But I don't think he applied for planning permission (to demolish the existing property and build a replacement dwelling) until June 2016. Planning permission was granted in mid September 2016. That meant he wouldn't have been in a position to start the work until then. So I can't see the non payment of his PCLS impacted on his building project up until then at least.*

*But In September 2016 – when he was in a position to proceed – he didn't have the funds. His PCLS (or the bulk of it at least) wasn't paid until January 2017. So I can see the argument that the work was delayed for some three months or so because of the unavailability of the PCLS. And that the whole project was put back by some three months. I'd assume that featured in the rationale for Lloyds offering a payment equivalent to three months' interest.*

*But, as to whether there was any further delay, the work doesn't appear to have started in January 2017 or anytime soon thereafter. The development commencement date was 27 November 2017, ten months after the first payment had been made in January 2017 and three months after the PCLS had been paid in full. So it seems the project wasn't at that stage delayed due to a lack of funds. Building works are frequently delayed for a variety of reasons, including planning issues, availability of contractors or weather considerations. I don't think it would be fair to say Lloyds should pay further interest when it appears the further delays were due to other factors and not the unavailability of funds.*

*Mr W's also mentioned lost rental income. But it seems that he didn't let the property and he and his wife now live there. Instead he's claimed for extra rent he had to pay due to delay in completing the build and moving in later than he'd otherwise have done. But if he gets interest for the period of delay as compensation I don't see that he's entitled to additional rental payments too. And paying him a sum equivalent to about three months' rent would give him less compensation.*

*The adjudicator thought Lloyds should pay an extra £500 on top of the sum offered. Lloyds didn't agree on the basis that what has been offered is for distress and inconvenience. But I think the sum offered - £6,115 – should more properly be regarded as an offer in respect of financial loss.*

*When we make an order for interest for being kept out of money that isn't a distress and inconvenience payment but a monetary award. And I've looked at the offer above, and whether it was adequate or not, on the basis that Mr W has suffered financial loss because of the overall time added to the transfer process as a result of delays on Lloyd's part. I found that he had but that the offer made was fair and reasonable.*

*Against that background I think a further payment for distress and inconvenience is warranted. I note that Lloyds initially suggested £1,000. So I'm going to say that Lloyds should pay that, in addition to the £6,115 it has offered. That's more than I might usually award. And more than the adjudicator suggested. But it is the figure Lloyds itself put on the distress and inconvenience Mr W had suffered, albeit that was the total amount it was then prepared to pay. I think it's within the range that might be awarded in a situation such as this.*

***my provisional decision***

*I uphold the complaint. Lloyds Bank Plc should pay Mr W £6,115 as compensation for financial losses plus a further £1,000 for distress and inconvenience he's suffered as a result of Lloyds Bank Plc's poor handling of this matter.*

**Lesley Stead**  
**ombudsman**