

## complaint

Mr H and Mr R complain about the delay setting up a self-invested personal pension ("SIPP"). The SIPP was needed to buy a commercial property. They say St. James's Place Wealth Management Plc ("SJP") is responsible for their losses including VAT payable on the purchase price.

## background

This complaint was investigated by one of our adjudicators. He confirmed the IFA was an 'approved person' to carry out the work requested. However he pointed out that the IFA's wife and son were also involved but in an administrative capacity only.

The key events are as follows:

5 May 2015 – Mr H sent SJP the terms of sale for the property purchase. The form had a proposed completion date of 26 June 2015 *"if possible"*. VAT of 0.20% was to be confirmed payable as part of total property cost.

27 May 2015 – Mr H and Mr R said they were told by the IFA the property could be held in a SIPP. SJP confirm that a decision in principle was received from the SIPP provider. The SIPP provider notes that the target completion date of 26 June 2015 is *"ambitious"*. It recorded that the lease expired October 2015.

29 May 2015 - Mr H meets the IFA. He was informed of SIPP provider's decision.

12 June 2015 – Email from Mr H requesting meeting with SJP *"about the purchase of another property"*.

16 June 2015 – Another meeting with SJP. The main discussion was about another property purchase. SJP explained how the SIPP would be established.

26 June 2015 – Meeting with SJP.

7 July 2015 – IFA's son requests current and transfer plan values for the SJP pensions.

21 July 2015 – Mr R asks the IFA for an update.

22 July 2015 – IFA's wife responds: *"As soon as this is received we will carry out the necessary work on this straight away and send it to (sic) the compliance department. This will then be checked by them and sent to us with the final approval, we are hoping this will not take too long..."*

24 July 2015 – Internal email from SJP to IFA's son with current and transfer values.

29 July 2015 – IFA's son confirms he's waiting for compliance department checks. Its noted that Mr R's is to be kept updated.

31 July 2015 – IFA said he phoned Mr R and provided an update.

5 August 2015 – Mr R emails his IFA's son to arrange a meeting for 17 August 2015.

SJP said that its office was in contact with Mr H between 5 and 13 August 2015.

13 August 2015 – Meeting with IFA. Discussions included agreement of costs/charges and the future purchase of a second property via a SIPP.

19 August 2015 – Suitability Letter issued setting out the Next Steps.

24 August 2015 – An official complaint is made.

25 August 2015 – Telephone conversation between Mr R and SJP about concerns over a drop in fund value. IFA's son phoned provided Mr R with regular phone updates from 25 August 2015 to 10 September 2015.

3 September 2015 – Mr R email requesting guidance on recovering the lost fund value.

15 September 2015 – Mr R and Mr H complete and sign their SIPP application forms.

18 September 2015 – Application forms returned by SJP administration centre. They are then submitted to the SIPP provider by hand.

23 September 2015 – SIPP established.

30 September 2015 – Transfer of funds completed.

After considering the timeline the adjudicator said that SJP had not given specific dates for the transfer to be completed. Nor had he seen evidence that the transfer was to have been put on hold. So he did not agree that SJP acted incorrectly in proceeding with the transfer after all the regulatory checks had been completed.

The adjudicator considered that SJP's offer of £700 for its acknowledged failure to progress the transfer was fair and reasonable.

SJP have offered £3,000 to offset interest incurred as a result of the VAT charge on the property caused by the delay. The adjudicator thought this was appropriate. Mr H and Mr R disagreed. But they did not give any additional evidence to show that SJP had agreed not to proceed with the pension transfer.

### **my findings**

I have considered all the available evidence and arguments to decide a fair and reasonable outcome to this complaint.

In response to the adjudicator's opinion, Mr R said that his complaint had three aspects.

These concerned the competence, training and experience of the SJP advisor and his family; that the reasons for the delay had not been fully explained by either SJP or the adjudicator. Mr R wants to see all the relevant correspondence between SJP and other involved parties; and that the SJP adviser wrongly transferred money from his plan despite being told not to.

The adjudicator confirmed that the SJP adviser was approved by the regulator (The Financial Conduct Authority) to advise on and undertake the transactions for Mr R and Mr H.

I too can confirm this was the case. I can also confirm that if Mr R and Mr H have further concerns about the competence of the SJP adviser, then these should be directed to the regulator. This service does not have responsibility for approving or disciplining individuals who undertake regulated investment business.

In respect of Mr R's comments concerns about the adviser's family, who he says were also involved in the matters complained of, I have not seen any persuasive evidence that they acted in anything other than an administrative capacity. They were not involved in the advice process. I therefore make no comment about their efficiency or otherwise.

Mr R says that he needs to see all the relevant correspondence before he can be satisfied that his complaint has been properly investigated by both SJP and this service. But in my view, the detailed timeline set out in the adjudicators assessment clearly shows that the adjudicator saw and considered all the relevant correspondence in reaching his conclusions.

These were that there had been delays in setting up the SIPP but the fault was not entirely SJP's; there were delays by third parties in providing necessary information to SJP before the SIPP could be set up. Nonetheless, there was evidence that SJP had not effectively communicated with Mr R and Mr H; this was acknowledged by SJP. Its offer of £700 was felt by the adjudicator to be in line with what this service would award in similar circumstances.

I agree. Whilst I understand Mr and Mr H's frustration with the delays, I am not persuaded that these caused a financial loss, except in respect of the VAT issue which I address below. In other words, the offer by SJP is for distress and inconvenience only. In my view, this is appropriate, particularly as Mr R and Mr H have not quantified what loss, if any, they say they suffered save for the VAT issue.

Mr R says that funds were transferred from his plan, contrary to his instructions. He says that he told his adviser – via the adviser's son – that the transfer should not proceed. But there is no evidence, such as a call recording, on which I can safely conclude what was said. In these circumstances, I base my decision on the balance of probability. In other words, what I think is most likely to have happened. And in my view, the most likely explanation is that there was confusion when the adviser's son passed Mr R's message to the adviser. Whilst unfortunate, it is understandable. The adviser's son was not a financial expert and I have not seen evidence that he was closely involved in the detail of Mr R and Mr H's affairs.

But in the event, the transfer went ahead, the SIPP opening was completed and was then used for its original intended purpose, to invest in property. So notwithstanding the delays, Mr R and Mr H's original strategy was eventually successfully implemented by SJP. And I agree with the adjudicator that whilst the delays were frustrating, Mr R and Mr H had not been given definitive timescales about how long the transfer would take.

Finally, I note that SJP have offered to reimburse the interest cost on the VAT that was paid on the investment property. The offer effectively represents 8 months interest. In my view, this is fair and reasonable given the delays in opening the SIPP which caused the VAT liability and for the time it will take before the VAT paid is reclaimed.

SJP have offered Mr R and Mr H £3700 in total. It has acknowledged there were failings in its dealings with Mr R and Mr H. It has apologised for this. In my view, its offer suitably recognises the financial loss, distress and inconvenience caused. It is for Mr R and Mr H to now decide if they want to accept the offer from SJP.

**my final decision**

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr H and Mr R to accept or reject my decision before 11 April 2016.

Terry Connor  
**ombudsman**