

Ombudsman's Determination

Applicant	Mr A
Scheme	Interactive Investor SIPP (the SIPP)
Respondents	Interactive Investor Services Limited (IISL)

Outcome

1. Mr A's complaint against IISL is partly upheld, but there is a part of the complaint with which I do not agree. To put matters right for the part that is upheld, IISL shall pay Mr A £500 in respect of the significant distress and inconvenience he has experienced as a result of its maladministration.

Complaint summary

2. Mr A complained that:-
 - IISL failed to handle his transfer application with due care and attention. It did not keep him informed of progress, causing him to have to contact it frequently for updates and provided misleading information.
 - IISL did not do its job properly and unduly delayed the processing of his transfer application. As a result, his pension funds lost value and his tax-free cash was less than it should have been.

Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
4. Mr A said that, in January 2020, he made initial contact with St James's Place (**SJP**). He indicated that he intended to transfer his pension arrangement with it to a new pension scheme.
5. On 30 January 2020, Mr A emailed SJP, having just completed the forms to transfer his SJP pension to the SIPP with IISL.

6. On 31 January 2020, Mr A sent a postal application to IISL requesting the transfer, in the form of cash, of the SJP pension fund to the SIPP. The transfer form did not include any reference to the timescale for completion of the transfer.
7. On 6 February 2020, IISL opened a pension account for Mr A. Mr A received an email acknowledgement on 9 February 2020.
8. On 11 February 2020, IISL received Mr A's postal application requesting the transfer of his SJP pension fund to the SIPP.
9. On 12 February 2020, IISL acknowledged receipt by email to Mr A. IISL has said, "The correspondence also advised Mr A at this point if he needed to sell any assets held with his other broker to raise money for the cash to be transferred to us, to do it as soon as possible".
10. On 17 February 2020, IISL was made aware of an internal IT issue where Mr A's account was not linking with IISL's administrator, Barnett Waddingham (**BW**). Mr A was not informed at this point.
11. On 20 February 2020, Mr A telephoned IISL again to check progress as he had heard nothing since 12 February 2020. He said he intended to apply to take his tax-free cash. During this call he was told the transfer forms had been sent twice to BW but had been rejected on both occasions. IISL reassured him that it had everything it needed from him.
12. On 2 March 2020, Mr A telephoned IISL again as he still had no indication of progress. He was again told that there was no progress on the transfer due to an ongoing issue with linking his IISL account to BW. IISL told him the issue was going to be logged with its IT department. Mr A complained that his funds were losing value through no fault of his own and he had not been notified of any underlying issues until he contacted IISL on 20 February 2020.
13. On 4 March 2020, IISL issued an acknowledgement of Mr A's complaint. On receipt, Mr A telephoned IISL as the communication did not provide any update on his transfer. He spoke to a manager of one of IISL's transfer teams (**the manager**) and advised her that the transfer had been requested more than a month earlier. He said he had now lost money due to the time that had passed since the request to liquidate his funds had been made.
14. On 10 March 2020, the manager at IISL telephoned Mr A to explain the issues and to confirm that it would send the transfer application forms to BW by post, which it did the same day.
15. On 11 March 2020, Mr A received an email from IISL confirming a transfer from SJP was underway.
16. On 12 March 2020, Mr A contacted IISL again to ask if SJP had provided a transfer value and transfer date. He also asked whether it had made any reference to his intention to transfer in January 2020.

17. On 13 March 2020, the manager at IISL confirmed that SJP had not yet quantified the transfer amount and that it had not mentioned any indication of his intention to transfer in January 2020. She suggested he might wish to raise the matter with SJP if he had given instructions to move his investments to cash and they had not complied. Mr A replied that he had not done so as he understood the transfer would take around ten to fourteen days.
18. On 17 March 2020, Mr A emailed IISL requesting compensation for the difference in the value of his pension fund on 25 or 26 February 2020 and the £195,600.55 that was ultimately to be transferred. He has said he used this date as it was when he felt the fund should reasonably have been disinvested based on IISL's three-week timescale. Mr A said his SJP pension fund value for the period between 7 February and 21 February 2020, when he felt SJP should have received disinvestment instructions from IISL, ranged from £250,860 to £254,501.
19. On 18 March 2020, IISL emailed Mr A advising that it expected to receive his transfer the following week. On 25 March 2020, the transfer of £195,600.55 was completed.
20. On 31 March 2020, IISL issued its formal response to Mr A's complaint, following a telephone call earlier that same day. It again referred to the transfer forms having been sent twice to BW, which subsequently transpired to be incorrect. It accepted that the transfer to IISL had taken six weeks due to an internal issue where his IISL account was not linking with BW's systems. It offered £200 in recognition of any distress or inconvenience caused as a result of the poor experience. This included its lack of ownership of the transfer, the lack of updates on the IT issue that was not logged immediately, and all the unnecessary contact Mr A had to make as a result. IISL did not accept responsibility for the reduction in the value of Mr A's pension fund. Mr A rejected this offer.

Adjudicator's Opinion

21. Mr A's complaint was considered by one of our Adjudicators who concluded that further action was required by IISL. The Adjudicator's findings are set out below:-
 - There were administrative failings on IISL's part. IISL received Mr A's application to transfer on 11 February 2020. It took from 17 February 2020 to 2 March 2020 to log the IT issue it had identified as preventing progress with Mr A's application. It then took until 10 March 2020 to take the contingent action of sending the paper application to BW by post.
 - IISL's communications throughout Mr A's dealings with it were poor and, on occasions, inaccurate. It had identified an IT issue with his application on 17 February 2020 but did not tell him about it when he asked for an update on 20 February 2020. It gave Mr A assurances that his application had been forwarded twice to BW and repeated this in its complaint response to him on 31 March 2020, although this was later corrected. Both attempts to forward the application forms

to BW had in fact failed. In reality, nothing had been sent to BW until IISL took the remedial action of posting the forms on 10 March 2020.

- IISL could have acted sooner when it discovered the IT issue with Mr A's application. When its second attempt to send the application had electronically failed, it could at that point have taken the remedial step of sending a paper application by post. Instead, IISL contributed further to the delay, firstly by not logging the fault until 2 March 2020 and then by taking no further action until 10 March 2020.
- These failings amounted to maladministration that had caused Mr A significant distress and inconvenience and IISL's award of £200 to Mr A was insufficient.
- In relation to Mr A's complaint about a loss of value from his pension fund over the period when the maladministration occurred, Mr A confirmed he was aware that this would require SJP to disinvest his pension scheme investments prior to transfer. He was aware that he could have instructed SJP to disinvest at a time he felt appropriate, as IISL drew his attention to this on 12 February 2020. Mr A acknowledged this in his telephone conversation with IISL on 13 March 2020 when he confirmed he had decided not to disinvest, based on the time he anticipated it would take for the transfer to be completed.
- Mr A remained responsible for the investment of his pension funds prior to the point where SJP was procedurally required to disinvest to conclude his transfer.

22. Mr A did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr A provided some further comments which are as follows:-

- His arrangement with IISL to arrange the transfer should be viewed as contractual on the basis that IISL had entered into a contract to complete the transfer of his SJP SIPP within three weeks.
- He entered into a contract with IISL on its acceptance of his transfer application form.
- He has suffered financial detriment as a result IISL's failure in the performance of that contract.
- IISL is attempting to rely upon the fact that he should have sold his investments.

23. Mr A's further comments do not change the outcome, I agree with the Adjudicator's Opinion.

Ombudsman's decision

24. Mr A complained that IISL had unduly delayed the processing of his transfer application. He said as a result his pension funds lost value and his tax-free cash was less than it should have been.

25. Mr A contended that a time-bound contract was formed when IISL accepted his application to transfer. For Mr A to have entered into the transfer arrangement with IISL on the basis that the three-week timescale was contractually agreed, the terms would have needed to be clearly expressed prior to the submission of his application form.
26. I note that the transfer application form signed by Mr A includes no reference to any guarantee of a specific timescale and Mr A did not provide evidence of any such guarantee.
27. On receipt of the application, IISL issued an email of acknowledgement which Mr A received on 11 March 2020, in which it said:

“How long will the transfer take?
Transfers can take up to **3 weeks**
UK stocks can take up to **6 weeks**
Funds and international stocks can take up to **8 weeks**”
28. I consider the wording of this acknowledgement to represent a guide to the typical timescale rather than certainty or a guarantee that the transfer would be completed in no more than three weeks. In any event, this acknowledgement was received after Mr A’s decision to submit his application form so it could not be considered to be evidence of the terms upon which he believed he had engaged IISL to act.
29. For a contract to exist, the essential elements of a contract must be found; offer, acceptance, consideration, the intention to create legal relations, and certainty of terms.
30. I do not agree that IISL made an offer to complete the transfer within 3 weeks. Nor do I agree that there would have been certainty of terms even if the existence of an accepted offer were proven. IISL said a cash-only transfer “Can take up to three weeks.” This is an indication of possible timescale and does not represent certainty of terms.
31. Even if I agreed, which I do not, that there was both an accepted offer and certainty of terms, I do not agree that there would have been any intention to create legal relations. IISL was one party to the transaction and would not have been in a position to guarantee the performance of external parties to the transfer such as SJP, the investment managers acting for Mr A’s SJP SIPP, or the transfer administration platform Origo. I am not persuaded that IISL would have intended to infer any such guarantee, and none was mentioned in the declaration of the application form that Mr A signed in order to commence the transfer process. I find that the evidence dictates that no such guarantee was given or intended.
32. Mr A discussed his transfer intention directly with SJP before he completed his IISL transfer application form. When IISL invited Mr A to consider whether he should sell investments under the transferring scheme, he said he had decided not to do so on the basis that his transfer was going to take around 10 to 14 days to complete.

33. IISL was not Mr A's adviser. He initiated the transfer of his pension and intended to manage the investments in retirement. I do not accept that he would have been ignorant to the risks of investment volatility. He could have taken control of the timing of when investments were sold to mitigate those risks, but instead allowed the timing to be determined by IISL's process. I find that Mr A made his own, informed decision not to sell his pension investments and understood the volatility risks associated with his decision.
34. IISL failed to act promptly on the IT issue that was causing the transfer of Mr A's pension fund to fail. Even when IISL was aware of the issue it failed to keep Mr A informed, causing the need for Mr A to have to repeatedly press for information. These failings were aggravated by IISL's provision of inaccurate information regarding the status of the transfer and its efforts to put things right. These failings represent maladministration and will have caused Mr A distress and inconvenience. In the circumstances I find that an award of £500 is appropriate to acknowledge the significant distress and inconvenience Mr A has experienced.
35. I partly uphold Mr A's complaint.

Directions

36. Within 28 days of the date of this Determination, IISL shall pay Mr A £500 in respect of the significant distress and inconvenience he has experienced.

Anthony Arter

Pensions Ombudsman
30 September 2022