

The complaint

Mr Y complained to Intelligent Money Ltd about its failure to provide him with any paperwork regarding his Bankruptcy Solutions Pension Plan (BSPP). He says this meant he was unaware of the high charges on his plan and that his fund was invested in cash.

What happened

Mr Y was subject to a Bankruptcy order in 1996. As a result, the Insolvency Practitioner consolidated several of his pensions in a BSPP that was ultimately held with Intelligent Money. The BSPP was set up by the Insolvency Practitioner, with the practitioner as the contact name and address on the plan.

In 2007 Intelligent Money issued a letter to the Insolvency Practitioner. It said that if interest in the BSPP was transferred to Mr Y, he would be able to continue to run it. But it said that once the plan was transferred it would recommend that professional advice was sought.

In 2009, the Insolvency Practitioner wrote to Intelligent Money and said that it was disclaiming its interest in the BSPP and that any further correspondence should be issued directly to Mr Y. It also confirmed the contact address for Mr Y. However, although the plan was moved over to Mr Y's name, Intelligent Money failed to remove the bankruptcy marker.

In 2019, Mr Y was approaching retirement so he contacted Intelligent Money to ask for information on his BSPP. In response to his enquiry, Intelligent Money issued Mr Y with an annual statement. Mr Y wrote back to Intelligent Money querying why the statement said it was annual as it was the first he'd received. And he requested confirmation as to whether he should have been receiving these each year. He also raised a number of other questions about his BSPP. Despite several chasers, Mr Y didn't receive a reply to his questions until December 2021. By which time he'd instructed an Independent Financial Adviser (IFA) to assist him.

In February 2022, Mr Y complained to Intelligent Money. He said the complaint was threefold. Firstly, he was unhappy that he hadn't been sent any statements about his BSPP. He was also unhappy that he hadn't received any interest on his pension since 2010 and that the only transactions on his plan had been the annual charges being taken, which he considered extortionate. And he was dissatisfied with the overall communication between him/his IFA and Intelligent Money.

Intelligent Money responded to the complaint. In summary it said that it didn't deal with the individuals involved when a plan was set up as a result of bankruptcy; its contact would be the Insolvency Practitioner. It also confirmed that its annual fees and the terms of the contract had been agreed with the Insolvency Practitioner when it was set up. And it explained that it didn't give advice and that once interest in the plan had been moved to Mr Y it was for him to take advice as to the suitability of the plan. It acknowledged that the fees may have been higher than Mr Y would have wanted to pay and although Mr Y hadn't exercised his right to go on the open market, as a gesture of goodwill it offered him £500. Mr Y was unhappy with Intelligent Money's response and offer so he referred his complaint to our service for review.

One of our investigators reviewed the complaint and thought Intelligent Money needed to do more to put things right. In summary, the investigator said that Intelligent Money's failure to remove the bankruptcy marker on the BSPP led to Mr Y not receiving any statements. As a result, he didn't have the oversight he required to know what was happening with his pension. And as Mr Y didn't have any involvement in the BSPP being set up, he was unaware of how his funds were invested or what charges were being applied.

The investigator was satisfied that if the marker had been removed when it should have been, Mr Y would likely have received his statements and taken action sooner, either staying with Intelligent Money but investing his funds or transferring away. While the investigator couldn't say for sure exactly what Mr Y would've done, he noted that he was in the process of transferring his BSPP to another provider.

In terms of the service provided by Intelligent Money, the investigator thought this had been poor both in terms of the original error and when providing subsequent information. This was especially so after Mr Y sent further questions in November 2019, with it taking Intelligent Money over a year to respond. The investigator explained that Mr Y had also highlighted more recent delays in his complaint letter as it took some time for his IFA to receive information about the BSPP.

The investigator thought the £500 Intelligent Money had offered Mr Y was fair in terms of the inconvenience the errors had caused. But he also recommended Intelligent Money complete a calculation to determine how much Mr Y's fund would be worth had it been invested sooner.

Mr Y accepted the investigator's findings. Intelligent Money said that its offer of £500 was still available to Mr Y but it didn't agree that it needed to do more. It said its position was as set out in its final response and it requested that the matter be considered by an ombudsman.

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.

Other than to say that its position is as set out in its final response, Intelligent Money didn't provide any further comments to explain why it doesn't accept the investigator's findings. Having carefully considered everything, I agree with the investigator's opinion and for mostly the same reasons. So I only intend to summarise why I'm upholding the complaint.

Mr Y didn't have any involvement in his BSPP being established so he had no idea what the charges were on his plan, that it was invested in cash or that he would need an IFA if he wanted to make any changes to it.

In its final response Intelligent Money said that once the plan had been put into Mr Y's name, it was for him to take advice as to the suitability of the plan. However, it's not reasonable for Intelligent Money to have assumed that Mr Y would know this. I know it's said that it only deals with the Insolvency Practitioner on BSPPs. But it advised the Insolvency Practitioner that Mr Y could continue with the plan if it was transferred to his name. This suggests to me that if it had removed the bankruptcy marker, as it was supposed to once the plan was moved into Mr Y's name, that it should have contacted Mr Y. And I don't think it's unreasonable to suggest that it ought to have done this in order to inform Mr Y how his plan worked and to explain that he would require an IFA.

Intelligent Money also said in its final response that Mr Y hadn't exercised his right to go the open market once the plan was put in his name. But again, it didn't tell Mr Y this so it's unclear how he was expected to know what his options were.

Had Intelligent Money written to Mr Y in 2009, as it ought to have done, I think it's likely that Mr Y would have instructed an IFA to act on his behalf much sooner than he did.

Our investigator said that he thought action would have been taken following on from when the first annual statement should have been issued to Mr Y. It doesn't seem unreasonable to use this as a starting point for when Mr Y may have taken action, if Intelligent Money hadn't made any errors.

I also agree with the investigator that the service Mr Y received since he contacted Intelligent Money has fallen short of what I would expect. Mr Y wrote to Intelligent Money in November 2019 but he didn't receive a response to his questions until December 2021, more than two years later.

Like our investigator said, I think the offer of £500 for the inconvenience caused to Mr Y is fair. However, I'm also directing it to complete a calculation to reflect that Mr Y's plan has been in cash since 2009. I think if Intelligent Money had done what it should have in 2009, Mr Y would have instructed an IFA sooner and his fund would have been invested.

Putting things right

Fair compensation

My aim is that Mr Y should be put as closely as possible into the position he would probably now be in if Intelligent Money hadn't failed to remove the bankruptcy marker on his plan .

I take the view that Mr Y would have sought financial advice sooner and would have invested his plan rather than leaving it in cash. It's not possible to say *precisely* what he would have done. But I'm satisfied that what I've set out below is fair and reasonable given Mr Y's circumstances.

What must Intelligent Money do?

To compensate Mr Y fairly, Intelligent Money must:

- Compare the performance of Mr Y's investment with that of the benchmark shown below. If the actual value is greater than the fair value, no compensation is payable.

If the fair value is greater than the actual value there is a loss and compensation is payable.

- Intelligent Money should also add any interest set out below to the compensation payable.
- Intelligent Money should pay into Mr Y's pension plan to increase its value by the total amount of the compensation and any interest. 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 Intelligent Money is unable to pay the total amount into Mr Y'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 total amount 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 Y won't be able to reclaim any of the reduction after compensation is paid.
- The *notional* allowance should be calculated using Mr Y's actual or expected marginal rate of tax at his selected retirement age.
- It's reasonable to assume that Mr Y is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr Y 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%.
- Pay to Mr Y £500 for the inconvenience caused as a result of the errors in 2009 and for the subsequent delays in dealing with his correspondence.

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

| Portfolio name | Status | Benchmark | From ("start date") | To ("end date") | Additional interest |
|----------------|-------------------------------------|---|---------------------|------------------|--|
| BSPP | In the process of being transferred | FTSE UK Private Investors Income Total Return Index | 20 December 2009 | Date of transfer | 8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving Mr Y's acceptance) |

Actual value

This means the actual amount payable from the investment at the end date.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

Why is this remedy suitable?

I've decided on this method of compensation because:

- It's likely Mr Y would have wanted Capital growth and was willing to accept some investment risk.
- The FTSE UK Private Investors Income **Total Return** index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return 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 Y's circumstances and risk attitude.

My final decision

For the reasons explained, I'm upholding this complaint and I direct Intelligent Money Ltd to pay redress as set out below.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Y to accept or reject my decision before 31 March 2023.

Lorna Goulding
Ombudsman