

The complaint

Mr K is unhappy that St James's Place UK plc (SJP) delayed in dealing with a transfer of his pension to a new provider.

What happened

I issued a provisional decision on 24 April 2024. I've repeated here what I said about what had led up to Mr K's complaint and why I thought the complaint should be upheld.

'Mr K had a retirement account (a SIPP or self invested personal pension) with SJP. He wanted to transfer his pension fund to a new SIPP with Vanguard. Vanguard sent the transfer request to SJP on 19 January 2023. On 10 April 2023 the transfer request was updated to clarify that the intention was to transfer the pension in full. On 20 April 2023 a partial transfer of £218,176.90 was made. That left about £150,000 uncrystallised funds with SJP.

By 11 July 2023 the transfer hadn't been completed and Mr K complained to SJP about the delay. SJP sent their final response on 31 July 2023. SJP said that, under Financial Conduct Authority (FCA) regulations, SJP needed a record of Mr K's previous pension benefit claims, known as his crystallisation history, to complete the transfer. SJP didn't have this because some of the information was still held by Sippchoice, Mr K's previous pension provider. When Mr K had transferred to SJP, the regulations didn't require the crystallisation history. SJP said it had made a number of requests via secure email to Sippchoice but had yet to receive a response. SJP said it would make further attempts to get the information. SJP offered to request a comparison calculation from Mr K's new provider to see if the delay had caused Mr K any financial disadvantage. SJP also offered Mr K £250 for the distress and inconvenience caused.

I understand that Sippchoice had in fact gone into administration. In September 2023 Mr K chased SJP and asked them to contact Dentons Pension Management Limited (Dentons) who'd taken over Sippchoice. SJP didn't do this due to concerns about authorisation. On 3 November 2023 Dentons called SJP and provided the information required but SJP said it was needed in writing. On 14 November 2023 Dentons sent the information by post but without Mr K's retirement account details. Mr K says SJP did contact him at the end of November 2023 and that SJP's annual fees were taken then.

In January 2024 Mr K told us SJP had made the transfer to Vanguard but the funds hadn't been allocated to his account as SJP hadn't updated their electronic transfer system. Since then Mr K has confirmed that the transfer was finally completed on 26 January 2024 and all funds are now invested with Vanguard.

Our investigation was hampered as, despite making several requests by email and trying to contact SJP by telephone, SJP didn't provide its business file to us. In the end the investigator issued his view on the basis of such information as he had. In summary he said:

- *The transfer had taken about a year which was too long, even taking into account the difficulties of dealing with a business that was no longer operating. That would cause*

a delay and so it was reasonable to allow extra time for that. But SJP would be expected to make every reasonable effort to move forward by considering other ways to get the information and proactively trying to acquire it. SJP hadn't provided any evidence they'd done that so the investigator assumed SJP hadn't. SJP should've done more to move forward with Mr K's transfer in a timely manner.

- Mr K had also said he hadn't had sufficient updates and SJP had paid him compensation in July 2023 for poor service. Although SJP hadn't specifically stated what that was for, based on what the investigator had seen, he thought it likely SJP didn't update Mr K regularly.
- Mr K had said he wanted his annual fees back – if the transfer had gone through when he requested it in January 2023, he'd have paid a year's less in fees. The investigator said SJP would've still needed to administer Mr K's pension so some fees were justified. The investigator said SJP should refund an amount equivalent to half a year's annual fees. SJP should increase the compensation for inconvenience offered from £250 to £350 in view of the further frustration and inconvenience Mr K had experienced. SJP should also perform a comparison check as outlined in their 31 July 2023 final response letter and compensate Mr K if he'd suffered any financial disadvantage as a result of the delay.

SJP didn't respond to the investigator's view. Mr K said SJP had failed to communicate with him over a long period of time which had caused him a huge amount of stress as it seemed he was at risk of losing a large chunk of his pension fund. Even if SJP argued he'd suffered no financial loss, the stress caused by the delay should be recognised. The investigator acknowledged Mr K's comments but he didn't think the amount he'd suggested as compensation for distress and inconvenience (£350) should be increased.

What I've provisionally 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.

I'm sorry to learn of Mr K's difficulties in getting his pension with SJP transferred to a new provider. I'm pleased to see that the transfer has now been completed and all of Mr K's fund is now invested with Vanguard.

SJP hasn't cooperated with our investigation. As I've noted above, despite making multiple information requests, SJP didn't provide its business file to us. And we've had no response from SJP to the investigator's view.

We're governed by the DISP (Dispute Resolution) rules set out in the regulator's Handbook. DISP 3.5.9R (3) says that the ombudsman may reach a decision on the basis of what has been supplied and take account of the failure by a party to provide information requested. So my provisional decision here is based on such information and evidence as I've seen. Like the investigator I accept, given that Mr K's previous SIPP provider had gone into administration, it wasn't going to be entirely straightforward in getting the necessary information. If SJP had supplied their file, we'd have been able to see exactly what steps SJP took to try to get the information so that the transfer could be completed as quickly as possible. Without SJP's file I can't be certain SJP did all they reasonably could've been expected to do, including overcoming the problems that arose and which meant that getting the crystallisation history wasn't simply a question of asking the previous SIPP provider. And we haven't been able to ask SJP to deal with any queries we might have, such as confirming why, in the circumstances, SJP was unable to accept information that Mr K held and which had been provided by the previous SIPP provider.

From what I've seen, I don't think the transfer should've taken as long as it did. It took a

year, Vanguard having sent the transfer request to SJP on 19 January 2023 and the transfer not being fully completed until 26 January 2024. But it seems there was some uncertainty at the outset as to whether it was going to be a full transfer. That wasn't clarified until 10 April 2023 which allowed a partial transfer to be made on 20 April 2023. But completing the transfer of the remaining funds then took some nine months.

As to what would've been a reasonable time, given that there were difficulties, it seems from what SJP said in its final response letter dated 31 July 2023 which included an offer to request a comparison calculation from Mr K's new provider, that SJP would accept that the transfer should've been completed by then. That's six months from when a transfer was requested and three months or so from when the transfer request was updated. I think it's reasonable to proceed on the assumption that the transfer should've been completed by 31 July 2023.

SJP has offered to see if Mr K has suffered any loss. To do so, SJP will need to calculate what the transfer value would've been on 31 July 2023. SJP will then need to ask Vanguard to work out what Mr K's fund would currently be worth if that transfer value had been invested with Vanguard from that date and on the basis that Mr K would've invested in the same funds and in the same proportions as he actually did. That notional value can then be compared with the actual value of Mr K's fund as at the same date to see if there's any loss.

The investigator said Mr K should get a refund from SJP equivalent to half a year's annual fees. But Mr K would always have had to pay fees, whether to SJP or to Vanguard. His point is that Vanguard's fees were lower so if the transfer had happened earlier he'd have saved in fees. That will be taken into account in the loss calculation. I've said that SJP will need to work out what transfer value SJP would've paid on 31 July 2023. That notional transfer value will take into account the fees Mr K paid to SJP up to that date. But not those he was charged subsequently. When Vanguard calculates what Mr K's fund would be worth now if the transfer had taken place on that date as opposed to in January 2024, the fees that Vanguard would've charged from 31 July 2023 will be taken into account. I think that fairly addresses Mr K's point about having paid SJP's fees, which he says were higher, for longer than he should've done.

I'd ask that Mr K checks with Vanguard that it is agreeable to undertaking the comparison calculation I've suggested. If Vanguard can't assist I've outlined below an alternative means of ascertaining if Mr K has suffered any loss because of SJP's delay in completing the transfer.

I've noted Mr K's comments about the £350 the investigator suggested for distress and inconvenience. I hope Mr K is now reassured by the fact that the balance of his pension fund was transferred by SJP to Vanguard and so wasn't lost and the transfer is now complete. That doesn't of course wipe out the anxiety he suffered previously but it does mean that going forwards he'll be able to operate his new SIPP as he wishes.

I can also see that Mr K had to take steps himself to get the transfer sorted out. It seems he suggested to SJP that they get in contact with Dentons but, when SJP didn't do that (because Dentons wasn't an approved contact on Mr K's SJP retirement account) Mr K contacted Dentons himself and asked Dentons to provide the information SJP needed. Once Dentons had confirmed that in writing that meant the transfer of the balance of Mr K's fund could go ahead. So it would seem that Mr K was instrumental in terms of progressing the transfer and ensuring that SJP had the information which was required.

In the circumstances the impact on Mr K was significant, both in terms of the distress he suffered and the inconvenience in practical terms he was put to in trying to get things sorted out. But I think the amount suggested by the investigator, £350, is fair and reasonable and in

line with what we'd award in a situation such as this. We might make an award in that region where we think the impact of what a business did wrong (or here where the business failed to do what it should've done) has caused significant inconvenience and disruption and where the impact lasts over many weeks or months. I think that's broadly the situation here.'

Neither Mr K nor SJP commented on my provisional decision. We wrote to Mr K and SJP on 14 May 2024 about what I'd said about using a benchmark to calculate loss if Vanguard was unable to assist. We said, as it was unclear if Vanguard could assist, that, on the basis Mr K was a medium risk investor, the following benchmark would be suitable: FTSE UK Private Investors Income Total Return index. We also said that redress should be calculated as at the date of my final decision and that interest at 8% pa simple should apply if redress wasn't paid within 28 days of SJP being notified of acceptance of the final decision. We asked Mr K and SJP, if they disputed the assumption that Mr K was a medium risk investor or otherwise considered the benchmark inappropriate, to let us know.

SJP didn't respond. Mr K did. He said his decision to transfer was based on the fees charged by SJP and because he felt the same fund performance could be achieved at a lower rate. The delay in transferring his fund had resulted in the higher fees continuing to be charged by SJP in whose interest it was to avoid an immediate transfer so that their fees would continue. On that basis Mr K said compensation should be based on the fees charged by SJP from 18 February 2023 rather than on a benchmark.

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.

I understand that Mr K's decision to transfer may have been prompted because he regarded SJP's fees as too high. I haven't considered the fees as such or why Mr K wanted to transfer. All I'm looking at is how SJP dealt with the transfer and if there were delays on SJP's part.

I explained in my provisional decision why I thought the transfer had taken too long, even though I recognised that difficulties had been caused because Mr K's previous SIPP provider had gone into administration. So I don't agree with Mr K's suggestion that redress should be calculated from 18 February 2023 – that is a month after Mr K's transfer request was sent to SJP. I think the transfer was always going to take longer.

And, as I noted in my provisional decision, it seems there was some uncertainty at the outset as to whether it was to be a full transfer. That wasn't clarified until 10 April 2023 and a partial transfer was made on 20 April 2023. I said the transfer of the remaining funds should've been completed within three months or so after, so by 31 July 2023. It remains my view that's reasonable and taking into account the difficulties I've mentioned.

I note what Mr K has said about getting the same performance with another adviser but with lower fees. But that's not guaranteed. And sometimes the services provided by different advisers won't be exactly the same. Although different approaches may prevail, I maintain the redress I suggested is a fair and reasonable approach in assessing if Mr K has suffered any loss because the transfer was delayed – from 31 July 2023 until 26 January 2024 – and which meant his SIPP fund remained with SJP longer than it should've done. I explained in my provisional decision why that addressed Mr K's point about paying SJP's fees, which he says were higher, for longer than he should've done.

It would've been preferable if Vanguard had been able to assist as that would've been an exact comparison between what Mr K's fund value would've been worth, had the transfer

gone ahead earlier, and what it was actually worth. But, as Vanguard's position is unclear, I think the benchmark I've suggested should be used. The benchmark is a broader brush measure but I think it's fair in the circumstances and to bring some certainty to the situation. I'd point out that the calculation doesn't allow for charges so it's the return Mr K would've got net of charges. I've included an interest award in case payment of compensation is delayed.

Putting things right

My aim in awarding redress is to try to put, Mr K as far as possible, in the position he'd be in if SJP had dealt with things as I consider they should've done. Here, as I've said, I think that would've meant the transfer was completed by 31 July 2023 and not 26 January 2024. For clarity and as I've noted above, a partial transfer was made on 20 April 2023. The redress calculation only applies to amounts transferred after 31 July 2023.

To compensate Mr K fairly, SJP must:

- Work out what the transfer value would've been on 31 July 2023.
- Using the benchmark – the FTSE UK Private Investors Total Return index – work out what that transfer value would've been worth as at 26 January 2024.
- Compare that with the actual transfer value paid – if the actual transfer value was less then there's a loss and compensation is payable. If the actual value was greater, no compensation is payable (aside from the award for distress and inconvenience).
- If there's a loss then SJP should bring the loss up to date by adding a return, using the same benchmark, up to the date of my final decision.

If there's a loss, SJP should pay into Mr K's Vanguard SIPP to increase its value by the amount of the compensation. The amount paid should allow for the effect of charges and any available tax relief. Compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If SJP is unable to pay the compensation into Mr K's Vanguard SIPP, it should pay that amount direct to him. But had it been possible to pay into the SIPP, it would've 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 K won't be able to reclaim any of the reduction after compensation is paid.

The notional allowance should be calculated using Mr K's actual or expected marginal rate of tax at his selected retirement age. It's reasonable to assume that Mr K is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr K would've 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%.

SJP should also pay Mr K £350 for the distress and inconvenience he's suffered – as I've said above, that award is payable even if the calculation shows no loss.

Details of the loss assessment should be provided to Mr K.

SJP should undertake the loss calculation promptly on receipt of Mr K's acceptance of my final decision. If payment of compensation isn't made within 28 days of SJP receiving Mr K's acceptance of my final decision, interest must be added to the compensation at the rate of 8% pa simple from the date of my final decision to the date of payment.

Income tax may be payable on any interest paid. If SJP deducts income tax from the

interest, it should tell Mr K how much has been taken off. SJP should give Mr K a tax deduction certificate if he asks for one, so he can reclaim the tax on interest from HMRC if appropriate.

My final decision

I uphold the complaint. St James's Place UK plc must redress Mr K as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 19 June 2024.

Lesley Stead
Ombudsman