PO-19383

Ombudsman's Determination

Applicant	Mr S
Scheme	Suffolk Life SIPP (**the SIPP**)
Respondent	Suffolk Life (**SL**)

Complaint Summary

Mr S's complaint about SL, the SIPP administrator, is that it caused a delay in the transfer of his benefits under the SIPP to his occupational pension; and, this caused him a loss of investment growth and significant distress and inconvenience

Summary of the Ombudsman's Determination and reasons

The complaint should be upheld because: SL took too long to transfer his benefits.

Mr S was entitled to have his SIPP benefits transferred to his occupational pension by 22 March 2017; that is, two days after SL had completed its reconciliation of the assets held in the original SIPP. SL should therefore redress Mr S accordingly (see "Directions" for further details).

SL should also pay Mr S £500 for the significant distress and inconvenience caused by the delayed transfer.

Detailed Determination

Material facts

1. In 2012, Mr S took out a Self-Invested Personal Pension with European Pensions Management Limited (**EPML**). This consisted of three cash holdings: -

   i. A SIPP bank account (**the EPML Bank Account**).

   ii. A fixed-term cash account with Investec (**the Investec Account**).

   iii. A fixed-term cash account with Close Brothers (**the Close Brothers Account**).

2. In 2016, an investigation by the FCA concluded that EPML could no longer accept new business but could continue to administer existing SIPPs on its existing systems.

3. Around June 2016, EPML formally entered special administration regime insolvency proceedings. As part of this process, EPML's SIPP business was sold to SL.

4. On 1 September 2016, SL produced a statement showing the total value of Mr S's benefits was £107,941.42. The values of (i), (ii) and (iii) were £1,153.56, £74,781.25 and £32,006.61 respectively.

5. In August and November 2016, SL wrote to Mr S, explaining that his SIPP would be wound up and transferred to SL with effect from 5 December 2016.

6. On 18 November 2016, the Investec Account matured and the funds were transferred to an Investec internal transition account.

7. Or around 5 December 2016, the SIPP was set up and registered in Mr S's name.

8. On 7 December 2016, the EPML bank account was closed and the balance of £1,153 was transferred to a SIPP bank account with SL (**the SL Bank Account**).

9. On 10 December 2016, Mr S contacted SL and informed it that he wanted to transfer his benefits in the SIPP to his occupational pension, the Universities Superannuation Scheme (**the USS**). On the same date, Mr S sent transfer-out forms to SL.

10. On 13 December 2016, SL received the transfer-out request forms from Mr S and confirmed receipt thereof. It also informed Mr S, over the phone, that it would take about a month for his funds to be released.

11. EPML's staff were included in the takeover by SL; and, they continued administering the SIPPs until around mid-December 2016, after which time they were made redundant and EPML's office was closed.

12. On 12 January 2017, the Close Brothers account matured and the funds were transferred to the EPML Bank account. On 16 January 2017, the funds were transferred to the SL Bank Account.

13. Around the middle of January 2017, Mr S contacted SL and it informed him that the funds from the Investec Account had not been transferred to the SL Bank Account, but rather to a 30-day account; and, the transfer could not proceed until these funds had been received by SL.

14. On 17 January 2017, SL issued transfer-out discharge forms to Mr S.

15. On 25 January 2017, SL told Mr S it would be unable to commence the transfer-out process until it had received all the required documents from the USS.

16. On 26 January 2017, SL contacted Investec to request re-registration of the Investec Account to SL.

17. On 16 February 2017, SL instructed Investec to encash the Investec Account and return the funds to it (SL).

18. On 21 February 2017, the funds from the Investec Account were received by SL and the reconciliation process started.

19. On 5 March 2017, Mr S complained to SL about the delay transferring his benefits in the SIPP to the USS.

20. On 8 March 2017, SL acknowledged Mr S's complaint.

21. On 15 March 2017, SL completed the reconciliation of assets held within EPML's SIPP with SL's SIPPs.

22. On 16 March 2017, SL wrote to the USS outlining what documents and information it required in order to transfer the benefits of the SIPP to the USS. On the same date, SL responded to Mr S's complaint but did not uphold it.

23. From 16 March to 30 June 2017, there was various correspondence between SL, the USS and Mr S with regards to SL's requirements for transferring the benefits of the SIPP to the USS.

24. By around 5 July 2017, SL had received the documents and information it required to transfer the benefits of the SIPP to the USS, which were sent the following day.

25. On 14 July 2017, Mr S's benefits in the SIPP, which had an approximate value of £110,000, were received by the USS.

26. On 29 September 2017, Mr S complained to SL again about the delay.

27. On 17 October 2017, SL responded to Mr S's complaint but did not uphold it.

28. Dissatisfied with SL's responses, Mr S referred his complaint to this Office.

Summary of Mr S's position

29. Mr S considers that SL should be liable for investment losses arising from a seven-month delay because: (1) for some time it did not know where the Investec account was; (2) it took three months to do a "non-essential internal transfer"; (3) it carried out unnecessary due diligence on the USS; and, (4) it should have reported the delay to the Regulator after six months.

1. Investec Account delay

30. It took SL nearly six weeks to locate the Investec Account which contained more than £75,000 in cash. If SL had identified this account on or shortly after his request to transfer out, there would have been sufficient time to complete the transfer within about a month.

31. SL originally said that the funds in the Investec Account were transferred to a 30-day account. However, on 8 May 2018, Mr S received an email from SL indicating there was no 30-day Investec account. Rather, the funds in the Investec Account had been held in a transition account. So, they could have been transferred to SL sooner.

32. The contradiction between the initial and subsequent explanations indicated that SL was looking for reasons to delay the transfer and meant that little weight should be placed on any unsubstantiated claims it made.

33. SL's SIPP valuation on 1 September 2016 showed the correct mid-point values of the Investec Account and the Close Brothers Account. Whilst SL said there were complexities in the reconciliation process, it was a simple cash SIPP that, by 7 December 2016, was controlled on SL's platform; SL had provided no cogent argument or evidence of difficulties in the reconciliation process.

34. Of the three parts of the original SIPP, the EPML Bank Account had been transferred to SL on 7 December 2016; the Investec Account matured on 18 November 2016 and the funds were in a transition account from that date; and, the Close Brothers Account matured on 12 January 2017. Therefore, all the funds were available to transfer out of the SIPP on or around 12 January 2017.

2. Transfer of SIPP from EPML to SL's system

35. As part of the special administration process, the FCA stated EPML's systems could be used to administer SIPPs. Therefore, SL was under no obligation to move SIPPs to its own system, and it must be responsible for the resulting three-month delay, until 16 March 2017, and any losses. Moreover, he understood that his EPML SIPP had been transferred to SL on 5 December 2016 (as shown in a membership schedule with that date), albeit the Close Brothers Account did not mature until after that date. So, it was untrue that his SIPP had to be transferred to SL because of EPML's inadequate systems.

36. Nor was there any need to re-register his SIPP assets from EPML to SL, as the funds in the Close Brothers Account were transferred straight from the EPML Bank Account to the SL Bank Account. Therefore, the funds in the Investec Account could have followed the same process until mid-January 2017.

3. Pension Scams: A Code of Good Practice (March 2015) (**the Code**)

37. Mr S referred to the Code for the recommended levels of diligence to be applied to transfers. Principle 2 of the Code states that Trustees need to take a proportionate approach to assessing the risk of pension scams. He believed that SL had taken a disproportionate approach to the due diligence it carried out on the USS. He had contributed to the SIPP since 2012 and had been a member of the USS for many years. USS was one of the largest pension schemes in the UK. In these circumstances, no reasonable person would have considered that there was a risk of a pensions scam.

38. Specifically, SL carried out "Further Due Diligence" on the USS, under sections 6.3 and 6.4 of the Code, including asking it to produce copies of Scheme Deeds and certificated copies of the Scheme's bank statements. This was unnecessary and the main cause of a four-month delay. It ought to have been possible to carry out only the necessary due diligence – including establishing that the USS was HMRC registered, and that its bank details were correct – in a few days. Additionally, he had signed a disclaimer absolving SL of any responsibility for the transfer.

39. USS had never been asked to provide such information to a ceding scheme. In the end, SL obtained the information it required, but this was a long process where Mr S was required to act as "go-between". Some of SL's requests were "impossible" and "unlawful". There were substantial delays on both sides, in part due to having to refer many questions to senior management, which led to a four-month delay. In his view, no more than two months' delay could be attributed to the USS.

4. Investment loss

40. He was already making contributions to the Income Builder (defined contribution) section of the USS prior to the transfer; the SL transfer just followed this. So, his loss due to the delayed transfer was simple to calculate, i.e. his transferred funds would have gone into the same funds in the same proportions, but several months sooner.

41. Based on the rise in unit price between January and July 2017, of two funds he had been invested in within the USS, he calculated that he had suffered a loss of £6,625 because of the delayed transfer.

5. Other submissions

42. Given the volume of transfers which SL needed to complete, it was surprising that it had made EPML's staff redundant in mid-December 2016.

43. Because SL's owner, Curtis Banks, had previously bought books of SIPPs and transferred them onto its systems, SL ought to have been capable of winding-up and transferring EPML's SIPP onto its own systems within a reasonable period of time, i.e. within about a month.

44. The fact that SL had said some cases were prioritised, where members said they wished to transfer out, indicated that SL was not correct to claim that all transfers were carried out "in bulk", i.e. at the same time.

45. There were clearly organisational issues associated with SL's takeover of EPML. However, the delay starting the internal review/reconciliation process was an administrative error by SL. Because his transfer-out form was received on 13 December 2016, the funds ought to have been received by the USS no later than 1 February 2017, i.e. within six weeks of his initial request.

Summary of SL's position

Internal transfer – EPML to SL

46. The time taken by SL to reconcile the internal transfer from EPML was not the cause of the extended timelines.

47. SL accepted that it did not manage Mr S's expectations of the timescales for the internal transfer from EPML to SL (nor did it properly manage his expectations regarding the external transfer from SL to the USS). However, it was unable to do so due to the complexity of the whole transfer review process.

48. After reviewing EPML's systems, controls and processes, SL concluded that they were insufficient to allow it to fulfil its responsibilities under the SIPP. Therefore, it decided to wind-up the EPML SIPP and transfer it to SL's own systems.

49. As part of the internal transfer review process, SL had to "review and reconcile" all plans held with EPML. The transfer was completed in bulk with over 4,500 plans transferred to SL. As part of the process, SL had to instruct external asset investment managers on mass, to re-register all assets to SL. SL did, however, prioritise any cases where the individual investors had asked to enter drawdown or requested a transfer-out.

50. There were several inconsistencies in the information SL received from EPML; whilst this was frustrating, and the reconciliation process should have been straightforward, SL needed to review/reconcile all data received from EPML, to ensure its records were accurate, in order to protect its investors.

51. As part of the transfer process, SL was provided with details of where investors' funds were held. Then, it contacted the various investment providers in order to have the investments re-registered to SL. It contacted Investec in January 2017, and received the funds from the Investec Account on 21 February 2017.

52. Reconciliation processes took place following receipt of those funds to make sure no other assets were awaiting transfer and to identify whether the plan included any crystallised funds. This was completed by 16 March 2017. Mr S's case had been prioritised along with many other clients' and was processed as quickly as possible.

External transfer – SL to the USS

53. Whilst SL could have started its due diligence on the USS after 21 February 2017, when the funds were received from the Investec Account, the transfer would always have been delayed because of the time it took the USS took to comply with SL's "basic requirements", which should not have caused significant difficulties.

54. SL was actually able to transfer out to the USS from 16 March 2017; any delays after that were down to the USS. SL was being held responsible for time taken by the USS to provide information that should have been readily available to them. SL explained fully these requirements to the USS; in any case, the USS ought to have been aware of the documents SL would require (and should have been able to provide them within three days of SL's request).

55. SL wrote to the USS on 16 March 2017 and was "…pro-active and reactive to communication". SL did not reduce the requirements in any way, and worked with the USS to arrange for the necessary information to be provided in a suitable format.

56. SL could only begin to process the transfer to the USS after the internal transfer process was complete; it was unable to do so when the request was initially received. SL could not have requested the required due diligence documents earlier, because only its completed discharge forms, returned and signed by the member, constituted a valid transfer instruction it could have acted on (until these were returned on 21 February 2017, SL had no authority to speak with the USS). It was neither reasonable nor justifiable for SL to have started its due diligence on the USS before the internal reconciliation was complete, since SL had no way of knowing that it would take the USS four months to provide the documents SL required.

57. SL was obliged to complete due diligence on a receiving scheme before transferring funds to it for the first time, in order to establish its validity. Its requirements were in line with industry standards, e.g. the "Industry Code of Good Practice on Combating Pension Scams", "Financial Conduct Authority (FCA)" regulations and its own experience dealing with pension providers.

58. The Code of Good Practice was only a guide and the FCA requires companies to have their own procedures in place. SL had agreed its procedure in consultation with the FCA. If SL has not transferred to a specific scheme before, or within the last two years – and has therefore been unable to complete its due diligence, and/or lacks up-to-date information – it requests all documents it feels are relevant in order to protect the pension fund.

59. Whilst the USS is a relatively large pension scheme, that is not sufficient grounds for SL to reduce its due diligence requirements. In general, the Code of Good Practice does not reduce the requirements on grounds of scheme size. In particular, Part 6.2.1. of the Code includes a three-stage "risk triage". In SL's view, the nature of the USS justified further due diligence under this part of the Code, for example because it is not part of the Public-Sector Transfer Club and was not "known" to SL. SL runs two large SIPPs and, in the event of a transfer out request, is able to supply the due diligence documents in a matter of days, so the USS should have been able to do likewise.

60. SL would not complete any transfers where it could not be certain that the receiving scheme was legitimate. Doing so would be a significant breach of its responsibilities to its investors. At the time, and given the volume of transfers being completed, SL's Transfer Teams were stretched to capacity and it could not apply resource to reviewing onward transfer instructions that it was not yet in position to act upon. This would have been a poor use of staff resource and would have had an impact on the transfers it was able to move forward.

61. A simple verification of the USS's registration with HMRC would have been insufficient, contrary to pensions regulation and in "stark contrast" to messages about pension liberation in general and the Ombudsman's Determination in PO-5424 in particular. SL's due diligence process seeks to verify that pension schemes are legitimate and doubles as its bank verification process. A bank account statement, which is certified by a signatory, is reasonable and plays an important part in SL's anti-fraud measures. Indeed, in one case SL has seen, this process actually prevented transfer to a fraudulent account.

62. In order to verify that members have a statutory right to transfer, ceding schemes must confirm that receiving schemes meet the "purpose test", i.e. it must be established "for the purpose of providing benefits to, or in respect of, people with service in employments of a description or for that purposes and also for the purpose of providing benefits to, or in respect of, other people." SL requests the trust deed and rules in order to verify this point; and, it knows of no other way this can be verified. Moreover, it is reasonable for the USS to be able to provide these documents in a few days (and there is no factual evidence to the contrary).

63. Mr S was not prevented from accessing his pension fund or trading on the funds available while SL waited for the USS to provide relevant information. He was aware of the delays in the transfer process; and, it was his decision to wait until the external

transfer was complete before investing his funds within the USS (to suggest otherwise would be unreasonable).

64. SL refers to Pensions Ombudsman Determination PO-12763, in which a complaint was upheld against Northumbria Police Authority for failing to complete sufficient checks before executing a pension transfer. SL says, therefore, it is unreasonable to suggest it caused any delays in asking standard questions any scheme would expect to be asked (indeed, questions which the Pensions Regulator (**TPR**) expected to be asked, and which are covered by the Combating Pension Scams Code of Good Practice). In SL's view, PO-12763 is of relevance because it highlights the penalties imposed by the Ombudsman where ceding schemes fail to undertake sufficient due diligence on receiving schemes, prior to completing transfers.

65. There was not one transfer but two separate transfers, i.e. the internal transfer from December 2016 to March 2017, and the external transfer from March to July 2017. So, whilst the whole process took more than six months, the individual transfers did not. Therefore, SL is not required to make a report to TPR on the basis of breaching a six-month transfer limit.

66. SL has not caused Mr S a financial loss or distress and inconvenience; so, no redress or compensation is justified. In summary, whilst there was a delay, it was clearly down to the USS being either unwilling or unable to provide the necessary documents SL required, in order to comply with its regulatory obligations in respect of scams and pension liberation. Therefore, Mr S should direct his claim to the USS.

Conclusions

67. There were two "stages" in the whole transfer process, namely, an "internal" transfer and an "external" transfer. The internal transfer consisted in acquiring assets and accounts previously held with EPML, and re-registering them with SL. I have considered Mr S's point that the FCA had deemed EPML's systems to be sufficient (and that there was therefore no need for SL to transfer former EPML SIPPs onto its own systems). However, I accept SL's submission that EPML's systems made it difficult to complete necessary checks and I do not consider it was maladministration to decide to transfer systems. SL had agreed to buy another SIPP company that had gone into administration. Therefore, some due diligence and reconciliation would have always been necessary. There is no evidence that the particular system on which it took place was a factor causing delay.

68. I turn now to whether the internal due diligence and reconciliation took so long that it constituted maladministration. Mr S has provided extensive submissions regarding this point. First, from September 2016 (if not before), the original EPML SIPP seems to have been invested in only three cash accounts. There is evidence that their values at that time were known to SL (and that those values did not change significantly between that time and the time of Mr S's request to transfer out). Second, there is evidence that accounts (ii) and (iii) matured on 18 November 2016

and 12 January 2017 respectively; account (i) was just a SIPP bank account, which was transferred to the SIPP on 7 December 2016. Looking at his funds in isolation, I can see why Mr S concludes that everything was in order and the money was ready to move by 12 January 2017.

69. However, SL has provided further explanation of the volume of reconciliation activity which it had to undertake across the whole book of business. I have to decide whether it was responsible for maladministration in that context. In that context, and given the policy of prioritising transfer applicants, which was designed to mitigate the administrative delays which the reconciliation exercise was likely to produce, I am not persuaded that taking until March 15 2017 to complete the internal reconciliation was maladministration.

70. I turn now to the due diligence on the external transfer, which took something over four months because SL insisted on full documentation including Scheme Deeds and a "live signature" on a certified copy of a scheme bank account. I accept that the driver for SL's decision to carry out enhanced due diligence on the USS was its wish to satisfy itself that the scheme was valid and legitimate. Without in any way understating the importance of due diligence aimed at avoiding scams, I also accept Mr S's submission that the enhanced due diligence SL insisted upon was in excess of that recommended in the Code of Good Practice and disproportionate to the risk presented by a request to transfer to such a large and well-recognised scheme of which Mr S was already a member through his prior employment by a participating employer. The USS was not a member of the Public-Sector Transfer Club, and may have been "unknown" to SL at the time of transfer insofar as SL had not recently transferred benefits into it. But the USS was and is one of the largest occupational pension schemes in the UK by assets under management. Not only is it large, but it is well-known and well-established. I acknowledge that the Code of Good Practice does not specifically lessen the due diligence requirements based on the size of the receiving scheme. Nonetheless, I find if SL had taken a proportionate approach to this transfer request, it would have concluded that the risk of a scam or pension liberation was minimal.

71. Having confirmed its identity through its registration with HMRC, it is difficult to see any reason why SL would have continued to doubt the legitimacy or validity of this particular scheme. SL have not said that they did doubt it in fact, merely that they will not make any exception to their established process. I accept the Code is only guidance, and that SL had its own process; but, I cannot see that due diligence on a scheme of this nature should have taken more than a few weeks, even against the backdrop of high volume processing. SL says that it was not asking for any information that could not reasonably be expected to be presented in an efficient manner, and that its checks were in line with the Code of Good Practice and should have been easy to comply with. I disagree. For instance, SL's standard diligence letter asked for a copy of the USS's deeds and any Deeds of Participation of Employers. SL say this is necessary to check the purpose test but inspection of one

clause would be enough to do that and I note that in this case the complainant could demonstrate that he was already a USS scheme member.

72. I can see nothing in the Code which recommends the level of diligence in fact applied by SL when presented with a receiving scheme as large, well established and easily verifiable as the USS.

73. To explain this further, I do not consider that verifying receiving schemes via their HMRC registration alone would be sufficient in all cases. Rather, I find it was sufficient in this particular case.SL has explained that its practice of asking for a signed bank statement has in another case prevented a transfer to a fraudulent bank account. I accept that. However, there is no evidence that this risk was considered to be a factor when considering Mr S's transfer request.

74. In any event any checking process which was necessary could have been started earlier and carried out in parallel with reconciliation. The transfer request identifying the receiving scheme was made in December 2017. There is evidence that SL informed Mr S, on 25 January 2017, that it was unable to commence the transfer-out process until it had received the required documents from the receiving scheme, the USS. However, despite its stated policy of giving priority to individuals who wanted to transfer funds away, it did not actually request the information it foresaw it would want until much later. I do not agree that shortage of staff was a reason not to make the request promptly. SL says, it was unable to start the transfer out process when Mr S's request was initially received in December 2016 because, without discharge forms signed by him, it had no valid transfer instruction and no authority to correspond with the USS. I disagree. SL knew Mr S intended to transfer to the USS. It knew USS was not a scheme already recorded by it as 'known'. I therefore find that it could, without obtaining further authority, have informed the USS what documents it required to process a transfer out. Such documents were general, not specific to Mr S.

75. I find that the transfer as a whole took too long because SL carried out its due diligence on the internal and external transfers sequentially, not concurrently. It is here that the standard of administration fell short of what Mr S was entitled to expect. I find that SL was under an obligation to act promptly on the transfer instruction it received in December 2016; that is, it should have started its due diligence – both the internal and external parts – in December 2016, rather than waiting for all the cash from the EPML SIPP to be received into the SIPP. If it had done that, I see no reason that the external diligence should have taken longer than the internal transfer reconciliation, i.e. both could have been completed by 15 March 2017. I accept that SL could not foresee the length of time it would take to complete its process, but do not consider that was a reason to delay starting it until completion of the internal due diligence.

76. Mirroring the actual transaction which later took place, if proportionate due diligence had been completed in parallel with the internal reconciliation processes, I find that the funds would probably have been transferred and invested 7 days after internal reconciliation was complete, i.e. on 22 March 2017.

77. It is clear where the funds would have been invested and the fund performance is readily ascertainable. Consequently, I am satisfied that Mr S can demonstrate actual financial loss as a consequence of the delay and make a direction intended to remedy that injustice.

78. I have considered the point that Mr S could have invested the money while it was still with SL, but since he had notified SL that his intention was to have a cash fund transferred as soon as possible, investing it with SL would have been an odd decision. I consider it was reasonable to leave it in cash while he waited for the transfer process to complete. Whilst Mr S was aware that there was an ongoing delay, there is no suggestion he knew, or ought to have known, how long it would actually be. I therefore find it was reasonable for him to leave the funds in cash, even if investing them with SL until they transferred to the USS – and incurring additional buying/selling charges – might have resulted in his being out of the market for a shorter period of time overall.

79. SL has referred me to a previous decision of the Ombudsman, i.e. PO-12763. The Ombudsman must consider each case on the facts as they appear. The previous decision concerned particular risk factors which are not present in this case. In this case SL has not highlighted any risk indicators that were present on the facts.

80. Mr S has specifically said I should make a finding regarding whether SL should have made a report to TPR once the transfer delay exceeded six months. That is a matter which may be of interest to TPR, but it does not affect the issues I am considering here and I make no finding about it. I acknowledge that SL considers there was not one transfer but two.

81. Lastly, I should note that the Ombudsman does not impose penalties. The directions below are intended to provide the remedies which a court could give if the same claim had been brought before them and to acknowledge the significant distress and inconvenience caused by maladministration.

Directions

82. Within 21 days of the date of this Final Determination, SL shall: -

    (i) Obtain a loss calculation from the USS and pay to Mr S's fund with the USS, any difference between (1) the value of the units he bought with the funds he transferred from SL to the USS as at 14 July 2017; and, (2) the value of the same units if they had been bought on 22 March 2017.

    (ii) Obtain a loss calculation from the USS in respect of the investment return to date on any loss identified in (i) above, assuming the units had been held from

14 July 2017 to date, and further assuming they had remained invested in the same funds as at 14 July 2017.

(iii) Pay Mr S £500 for the significant distress and inconvenience which the delayed transfer caused him.

Karen Johnston

Deputy Pensions Ombudsman
26 September 2018