DRN-4446505

The complaint

Mrs M complains that Scottish Equitable Plc (SE) have delayed processing a Pension Sharing Order (PSO) from her ex-husband's plan to hers. She went on to say that SE weren't able to substantiate the amount that was transferred into her pension after the PSO had been actioned.

She's concerned that she's lost out financially because of SE's delays. Mrs M is being represented by her Independent Financial Adviser (IFA) in the complaint.

What happened

In October 2021, Mrs M was awarded a PSO from the court giving her 53.65% of her ex-husband's pension. As Mrs M's ex-spouse held his pension with SE, in December 2021, her IFA submitted the PSO to them and requested that they move her newly awarded entitlement into her own pension fund.

Initially, SE didn't receive the correct information that they needed from Mrs M's IFA to process the request. However, by 11 February 2022, SE had everything they needed to implement the Court's instruction, and on 3 March 2022, SE started work on facilitating the PSO.

By 14 March 2022, SE had undertaken the transfer and moved £449,299 to Mrs M's own pension fund. As the amount credited to Mrs M's pension was less than her IFA initially thought that she was entitled to, he contacted SE, asking them to provide a detailed breakdown of her ex-spouse's funds both pre and post application of the PSO. However, SE explained that they were unwilling to give the level of detail that the IFA was requesting because it would mean revealing personal information about Mrs M's ex-spouse's pension to which the IFA wasn't entitled to see.

Frustrated with SE's refusal to provide her with the information that she felt was reasonable to ensure that they'd complied with the Court Order, Mrs M decided to formally complain to SE on 7 June 2022. In summary, she said that she was unhappy with the amount of monies she'd received and wanted an explanation, with evidence from SE showing how they'd arrived at their transfer amount.

As Mrs M hadn't received a response to her complaint from SE by August 2022, she then referred her complaint to this service. In summary, she set out the same concern – that she was unhappy with the amount of time that SE were taking to action the court's instruction and she wanted proof that SE had credited her pension with the correct amount of monies.

In February 2023, SE issued their final resolution letter to Mrs M's complaint. They conceded that they'd taken far longer to switch the monies out of her ex-husband's pension pot than they would typically like. They went on to say that because of their delays, the transfer should have taken place on 13 February 2022. That meant, they said, Mrs M would've been entitled to a further £20,117. Consequently, SE decided to credit Mrs M's new pension with

those additional monies. In recognition of the trouble that they'd caused Mrs M, SE also explained that they were paying her £400 for the inconvenience that the whole process had had on her.

After reviewing SE's complaint response, Mrs M explained that she remained unhappy. She went on to say that she still wanted evidence from SE that the amount put in her pension set by the Court Order was correct. In addition, she wanted to understand the effect of any loss to her from SE not acting upon her IFA's instruction to sell those units and convert the funds to cash.

The complaint was then considered by one of our Investigators. She concluded that to demonstrate SE had put the correct amount in Mrs M's pension, details of her ex-husband's investments would need to be disclosed. And, as her ex-spouse hadn't provided that authority, it was inappropriate to provide the level of detail that Mrs M's IFA was asking for. Having looked at SE's calculations, however, our Investigator was satisfied that Mrs M had received the correct amount that she was entitled to. In addition, our Investigator felt that in light of the delays that SE had caused in actioning the Court Order, the £400 that they had offered to Mrs M for the trouble and upset caused, was fair and reasonable.

Mrs M, however, disagreed with our Investigator's findings. In summary, she said that she didn't think that she was being unreasonable asking for evidence of SE's calculations so she could satisfy herself that she'd been given her fair entitlement from her ex-spouse's pension.

Our Investigator was not persuaded to change her view as she didn't believe that Mrs M had presented any new arguments that she'd not already considered or responded to. So, Mrs M then asked the Investigator to pass the case to an Ombudsman to review that outcome.

After reviewing the complaint, I issued a provisional decision on this case as, whilst I was minded to agree with the Investigator's initial view, I was of the opinion that there was some common ground that I believed could be reached to aid the consumer and their IFA, in understanding how the business had reached the sum transferred to her pension.

What I said in my provisional decision:

In reaching a decision on this complaint, I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mrs M and by SE. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words, I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

I should also emphasise that it isn't appropriate for this service to intervene in matters that have already been considered by the courts, but I can look at whether any of the information SE provided to Mrs M was incorrect, or misleading. Those are the issues that I will consider in this decision. I've looked at the Pension Annex that SE used when calculating the value of Mr M's pension savings, that should be transferred to Mrs M, that was dated 12 October 2021.

SE were informed in December 2021 of Mrs M's wishes and that's the point at which they started collating the necessary information from Mrs M and her IFA to complete the order. I don't intend to provide a detailed timeline in my decision because the chain of events is well known to both parties. In addition, SE have also provided a breakdown of what happened and when, in their email to Mrs M's IFA on 18 May 2022. It seems that between 1 December 2021 and 11 February 2022, SE were waiting for Mrs M's IFA to return various pieces of documentation to them and respond to follow-up queries that had been raised. By 11

February 2022, SE had everything that they needed to process the transfer but it wasn't until 3 March 2022, that they started disinvesting funds from Mrs M's ex-spouse's pension. SE then processed the request on 14 March 2022 and transferred the monies to Mrs M's pension. SE have already conceded that they could have undertaken the transfer work on 13 February 2022, but due to an internal error, that process didn't begin until the following month.

Mrs M's IFA feels that SE could have acted upon their instructions sooner, but from what I've seen, SE were in constant contact with Mrs M and her IFA, requesting that various pieces of documentation be exchanged. For example, SE didn't receive the signed pension transfer authority form from Mrs M until 11 February 2022 (which she'd signed on 9 February 2022), so I've not been persuaded that they could've acted before 13 February 2022.

Like our Investigator, I've also reviewed SE's calculations on how they've arrived at the amount transferred to Mrs M's pension. And, whilst it's not this service's role to check firm's calculations, it does appear SE has applied a 53.65% debit to Mrs M's ex-spouse's pension, as the court required of them. In determining the financial impact of the delays, SE have compared what had been paid to Mrs M in March 2022 and then worked out what she would have received had the monies been paid to her in February 2022, taking account of the lost investment growth. Whilst I've not reviewed the unit prices that SE have used, their approach and methodology looks reasonable. They then updated their calculations in February 2023 after further discussion with Mrs M's adviser and that resulted in the addition of £20,000 of further monies being applied to her plan.

There's no doubt that SE delayed processing Mrs M's PSO. Whilst some of those hold-ups weren't directly attributable them, a large part were, and it wasn't until January 2023 that SE finally put things right for Mrs M.

I empathise fully with Mrs M and her desire to ensure that she's getting her fair share of what the court has instructed. However, I need to balance that wish with the reasonable privacy demands that her ex-spouse expects of SE. And, as our Investigator has already explained, it's for that reason that I can't force SE to provide detailed information about Mr M's pension as it would result in SE providing more information than is necessary to allow the IFA to satisfy themselves that Mrs M has been provided with a fair outcome. However, I do think there is a balance to be had and I don't think it's reasonable for Mrs M and her IFA to blindly accept what SE is saying as accurate.

So, to that end, I've looked closely at the various calculations that SE have submitted to this service and I don't think it's unreasonable for part of that information to be shared with Mrs M and her adviser. I think, by doing so, it will go some way to show Mrs M that the approach that SE have taken in reaching the end figure transferred is fair. Importantly though, that information wouldn't risk breaching Mr M's confidentiality by sharing information with Mrs M to which she is not entitled to. Having liaised in with SE, they've given me no reason why their detailed 'price comparison result' calculations can't be shared with Mrs M, so I therefore require SE to forward that information to Mrs M and her IFA.

Mrs M's IFA is concerned that SE refused to act on his instructions to sell down assets within Mr M's pension, pending the transfer of those monies into her pension. But, until such time as the monies are transferred out of Mr M's pension and into Mrs M's pension, Mr M is free to choose how his monies are invested, so I wouldn't expect SE to take instruction from an IFA, who isn't recorded as the servicing adviser on Mr M's pension.

Should Mrs M feel that SE's application of the PSO has resulted in an unfair outcome, that would be a matter for her to raise with the court. SE say that they have already paid Mrs M £400 in February 2023 for the trouble that they caused her. Thinking about the

inconvenience that she's experienced, I'm of the view that this amount is fair and reasonable in the circumstances and is in line with what I would have recommended SE to pay to Mrs M had they not already done so.

In summary, to demonstrate SE has put the correct amount in Mrs M's pension, Mrs M's IFA wants details of her ex-husband's pension and underlying investments. But, as I've already explained, as her ex-spouse hasn't provided that authority, I think it's inappropriate to provide the level of information that Mrs M's IFA is asking for. From what I've seen, SE have applied the order as instructed. So, whilst I'm planning on upholding Mrs M's complaint because of the delays that SE created in processing the PSO, I am only instructing SE to provide their 'price comparison result' calculations to Mrs M and her IFA, and pay Mrs M the £400 for the inconvenience that they caused her if they've not already done so.

Responses to my provisional decision

After reviewing my provisional decision, SE said that they didn't have anything further to add.

Mrs M's IFA responded, explaining that he didn't believe the outcome was reasonable. He explained that:

- Much of the delays in the processing of the PSO were down to SE refusing to take scanned documents from them.

- SE weren't being reasonable in refusing to give detailed information about Mr M's pension, particularly given that the court had awarded Mrs M 53.65% of it.

- Mrs M's IFA explained that the Court Order stipulated that Mr M shouldn't do anything to reduce the value of his pension and should he have done so, he would be in contempt of court.

- Mrs M's IFA went on to explain that his instructions to SE, asking them to sell the 53.65% of the pension fund, was the only way to ensure that the Court Order was acted on. Mrs M's IFA explained that he's of the view that both SE and Mr M may have therefore acted contrary to the Court Order and could be held in contempt.

- Finally, the IFA explained that if SE were to offer Mrs M £12,000 in full and final settlement of the complaint, she wouldn't take the case back to court.

Given Mrs M's IFA alleged that SE were in breach of the Court Order, this service shared Mrs M's correspondence with SE. SE explained that they were still of the view that they had acted reasonably and had nothing further to add.

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 have summarised this complaint in far less detail than Mrs M and her IFA have done and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this; our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something that I've not mentioned, it isn't because I've ignored it - I haven't. I'm satisfied that I don't need to comment on every individual argument to be able to reach what I think is the

right outcome. Instead, I will focus on what I find to be the key issue here – and that's Mrs M's disappointment about the length of time that it took SE to process the PSO and their unwillingness to provide the level of information about her ex-husband's pension that she feels that she's entitled to receive.

Whilst I am upholding Mrs M's complaint because SE could have processed the PSO more promptly, which is a point that SE have already acknowledged, I've not however been persuaded that they could have done so more quickly than February 2022 or that SE are being unreasonable in safeguarding Mr M's privacy, by refusing to give more detailed information to Mrs M's IFA about his pension. So, I'm of the view that the offer that SE have already made to Mrs M to put things right is fair in the circumstances.

Whilst I appreciate that Mrs M will likely to be disappointed by my decision, I'll explain why below. But, before I do, I want to acknowledge that I understand how stressful divorce proceedings can be and I fully appreciate the strength of feeling that Mrs M has about the issues raised.

I've thought carefully about the statements that Mrs M's IFA has made about the Court Order, which stipulated that Mr M shouldn't do anything to reduce the value of his pension and should he have done so, he could be in contempt of court. To be clear, neither Mrs M nor her IFA have submitted any evidence to this service to show that either Mr M or SE has wilfully reduced the value of Mr M's pension. As I've already set out though, until such time as SE is provided with all of the requisite information necessary from Mrs M and her IFA, in order to enable them to process the PSO, I wouldn't expect SE to take instruction from an IFA on encashing investments – particularly one who isn't recorded as the servicing adviser on Mr M's pension and when they weren't in receipt of all the necessary paperwork. This also means that Mr M is free to continue managing his pension as he sees fit, as long as he complies with the instructions set out in the Court Order.

But, to be very clear, if Mrs M believes that Mr M or SE have not compiled with this specific point of the Court Order and is therefore in breach of the court's instructions, that is a matter for her to raise through her legal representative and then for the court to address, and not this service. However, to avoid the costs of such an endeavour, Mrs M may wish to liaise directly with Mr M in the first instance, to try and resolve the matter informally.

Mrs M's IFA has explained that most of the delays were down to SE refusing to take scanned copies of documentation which, he says, were the only copies available to them. He's also sent an email to this service that shows he attempted to email a scanned copy of the PSO to SE on 30 November 2021. However, it seems that SE originally requested hard copies but were ultimately willing to take scanned copies of documents when they learned that hard copies weren't available. That email doesn't alter my thinking because it was only submitted to SE on the afternoon of 30 November 2021, the day before the timeline I've already considered, started.

Mrs M is of the view that SE could have acted upon her IFA's instructions sooner, but as I've already explained, SE didn't receive the signed pension transfer authority form from Mrs M until 11 February 2022 (which she'd signed on 9 February 2022), so I've not been persuaded that they could've acted before 13 February 2022, particularly as I've seen evidence of SE setting out what documents were still required to Mrs M's IFA in January 2022. So, until 11 February 2022, SE weren't able to action the PSO because they didn't have all of the necessary paperwork. Despite this, SE have conceded that they initially delayed starting work on the PSO in February 2022 and have acknowledged that within their redress calculation. I think it's important to acknowledge that facilitating a PSO isn't a straightforward undertaking, and it typically takes far longer to organise than an ordinary pension transfer. SE have to satisfy themselves that they hold all of the necessary information, prior to

actioning the instruction, and that's to ensure both parties are treated fairly. How long it takes to action a PSO varies from case to case, and is dependent upon a number of factors, not least how long each of the parties take to respond to the various requests.

SE acknowledged that there were delays in starting the processing of Mrs M's PSO, but from what I've seen, the February 2022 date looks fair and reasonable as the point at which SE should base their calculations from.

Mrs M's IFA has explained that if SE were to offer her £12,000 in settlement of her complaint, she would not take the matter back to court – SE have rejected that proposal however and I can see why. And that's because SE's redress calculations have attempted to put Mrs M back into the position that she would have been in, had it not been for the delays that were attributable to SE. Mrs M's representative has also said that SE have made it impossible for them to determine what the correct amount is that she's entitled to, because they've not provided their unit prices at '*certain crucial points'* - but I don't agree. And that's because, as I've already set out in my provisional decision, by instructing SE to share the detailed redress calculations with Mrs M that they've already provided to this service, will in my view, give Mrs M the information that she feels is lacking in understanding how SE determined the level of redress that they reached.

Mrs M's ex-spouse hasn't provided his consent for his pension details to be shared with her IFA and without that, SE won't provide the information her IFA is asking for. Despite what Mrs M's IFA may say, I don't believe Mr M's email of December 2021 to him gave that consent. As I've already explained though, I do empathise with Mrs M and her desire to ensure that she's getting her fair share of what the court has instructed. However, I need to balance that wish with the reasonable privacy demands that her ex-spouse expects of SE. And, as our Investigator has already explained, it's for that reason that I can't force SE to provide detailed information about Mr M's pension as it would result in SE providing more information than is necessary to allow the IFA to satisfy themselves that Mrs M has been provided with a fair outcome. However, I am of the view that SE should provide their redress calculations to Mrs M and her IFA so they can better understand how they reached the payment they've made to her.

I've very carefully considered the additional submissions that have been provided by Mrs M's IFA. As I've seen nothing to alter my thinking, I have reached the same decision and for the same reasons that I have already set out in my provisional decision.

My final decision

Scottish Equitable Plc have already offered to pay Mrs M £400 for the trouble and upset that they have caused her, and I believe that this is fair and reasonable in the circumstances of this complaint.

So, my final decision is that Scottish Equitable Plc should pay Mrs M the £400 if they've not already done so, and they must share copies of their redress calculations with her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 9 December 2023.

Simon Fox
Ombudsman