

The complaint

Ms G complains that EBS Pensions Limited (EBS Pensions) left the funds that had been transferred to her self-invested personal pension (SIPP), in cash – even after a stockbroker was appointed to invest the funds in April 2016. She wants to be compensated for the investment loss she says she's suffered up to the point she became aware her funds were still held in cash.

What happened

Ms G held a number of pension plans. In 2015 she completed an application for a new SIPP with EBS Pensions to accommodate the staged transfer of the pensions. Within the application form, under the section requesting details of an investment strategy, it was noted that Ms G was planning to invest into a stockbroker nominee account and no details were provided for the investment of the funds.

In April 2016 Ms G completed a SIPP agreement form with the third-party stockbroker – who was only authorised to advise on the investment strategy within the SIPP. This agreement contained details of the investment advisory service the broker offered and recorded information about Ms G's attitude to risk, experience of investments and her financial situation. It gave the broker authority to act on Ms G's behalf.

Ms G says she received a SIPP statement in 2016 which correctly confirmed no investment had been made with her funds from one of the transfers for £101,927.46. She says she didn't receive statements in 2017 and 2018 as she had moved to a new house – but said she did update EBS Pensions with her new address. She says she received an email in November 2018, in which she learnt that the funds were still held in the SIPP bank account. Ms G contacted her broker who contacted EBS Pensions and funds from two other transfers – one to the value of £90,576.25 was sent to the stockbroker in December 2018, and another for £58,414.29 was sent in April 2019.

The final transfer for £224,788.28 was made in February 2020.

But Ms G complained to EBS Pensions as she thought it should have taken steps to notify her that the SIPP remained invested in cash until late 2018 and should have sought an investment instruction from her.

But EBS Pensions didn't uphold the complaint. It said its terms and conditions (T&C's) stipulated that it couldn't give financial advice and that Ms G needed to specify what investments she wanted to make. It said it had made Ms G aware that it had received her funds and that it didn't hold any investment instruction. It said it did transfer the funds to a third party for investment when it received Ms G's instructions in December 2018 and in April 2019.

Ms G didn't agree. She said she'd provided the details of her broker after she first applied to transfer her funds and would have expected EBS Pensions to have contacted her to see if the funds should be transferred or at least to make her aware that the funds remained

uninvested. She said she was also concerned that her funds had ultimately been transferred at her brokers request and not hers. She thought she'd lost out on approximately 30% of investment growth.

So, she brought her complaint to us where one of our investigators looked into the matter. He said there was no evidence to demonstrate that EBS Pensions had received an instruction to invest Ms G's funds until late 2018 – and that from 2016 to 2018 she'd received annual statements which confirmed that the funds were invested in cash. So, he didn't think EBS Pensions had done anything wrong and he didn't think the complaint should be upheld.

Ms G didn't agree. She made the following points:

- She provided evidence from the stockbroker who explained the steps he would expect the SIPP administrator to take in such circumstances. She said that EBS Pensions should have contacted her to establish what proportion of her funds she wished to invest, and that its actions showed that it didn't follow "*standard administrative responsibility*".
- She said EBS Pensions should have expected the money to be invested and should have checked with her much sooner than the two years that it did wait.
- EBS Pensions didn't update its systems with her new address when she first contacted it, which compounded the administrative problem.
- EBS contacted her stockbroker to find out the amount of growth she may have lost over the matter. She thought that was unusual behaviour from an administrator.
- She didn't think EBS Pensions had the authority to accept an instruction from the stockbroker. She thought it had to come from her.

The investigator reiterated his view that EBS Pensions' T&C's didn't say that it needed to contact a customer to confirm investment decisions. He said that, while it might be good customer service to do so, it wasn't a requirement. He also confirmed that he thought EBS Pensions had updated Ms G's address in a timely manner and showed how it had provided annual statements which demonstrated that the money was held in cash.

Ms G said she wanted her complaint to be referred to an ombudsman making the following points:

- EBS Pensions had sufficient instructions from her to send the money to her broker for investment. Subsequent deposits she's made to the SIPP have always led to her being asked if she wants the money to be invested by the broker.
- She had no reason to think the funds hadn't been invested. Because she moved to a new house and because EBS Pensions didn't update her address she didn't receive the two annual statements which would have confirmed to her the money remained in cash.
- EBS Pensions had apologised to her regarding an "*administrative error*" and contacted the stockbroker about any prospective investment loss. She didn't understand why EBS Pensions would have done that unless it knew it had made a mistake.

As no resolution could be found the complaint has been passed to me for a review.

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.

And having done so I agree with the investigator and for broadly the same reasons. I can see the strength of feeling Ms G has about this matter and I have some sympathy for her position whereby her funds remained uninvested for a significant period. But I don't think that was EBS Pensions' fault, which I know isn't the outcome Ms G was hoping for – so I'll explain my reasons.

Should ESB Pensions have made Ms G more aware her funds hadn't been invested?

ESB Pensions T&C's state *"We are not authorised to give investment or financial advice. You must direct the manner in which the funds within your arrangements are to be invested. Neither the Trustees nor we accept any liability for any decisions relating to the purchase, retention and sale of the investments within your Member's Fund."*

And the declaration within the SIPP application form also set out a similar position. It said *"I understand that neither (the SIPP provider) nor the trustees are regulated by the FSA to provide investment or financial advice. (the SIPP provider) will neither review advice from an appointed official nor review the financial status or risk and investment strategies of any nominated investment manager"*.

So, I think it was clear that although EBS Pension received the funds – in cash – from the ceding pension schemes, it had no authorisation to invest the money. The application form noted that the investment strategy was to be carried out by a stockbroker and no reference was made either to the funds to be invested in or the amount to be invested. In any case EBS Pensions would have been unaware of exactly how the funds were to be invested as that was the stockbroker's role. All EBS Pensions could have done was to make Ms G and the broker aware that the funds were held in the SIPP – which I think it did through the annual statements.

Ms G says that EBS Pensions ought to have contacted her to ensure she knew the funds were ready to be invested. But I don't think EBS Pensions was obliged or indeed authorised to have further involvement in the investment strategy or to advise that investment hadn't been made. When the first transfer was made no instruction had been received about a third party being involved in the investment strategy, so I think that any attempt to contact Ms G about uninvested funds could have been viewed as an attempt to give investment advice. So, I don't think it would be appropriate for EBS Pensions to contact Ms G for that reason.

And, subsequently when the broker instruction had been provided to ESB Pensions, I think it was for Ms G and her stockbroker to then make those decisions when they were ready to do so, as long as they were aware that the funds had been transferred – which Ms G accepts was the case from the statement she received in 2016, which noted the value of the SIPP and that it was held in a bank account within the SIPP.

I haven't seen any evidence which obliged EBS Pensions to communicate with Ms G about the ongoing status of her funds or to make her aware of the lack of investment. I know Ms G believes that EBS Pensions had a duty of care to do this, but I haven't seen any evidence to say that it was required to do so, and I can't safely say that it should have made Ms G more aware or that it did anything wrong over that matter.

The other issues including not updating Ms G's address and non-receipt of annual statements.

Ms G says she didn't receive annual SIPP statements from 2017 and 2018 so she wasn't aware that her first transfer was still held in cash.

But I've seen the annual SIPP statement from March 2018 which showed the funds, valued at £103,365.49, were invested into the Trustee bank account. This statement was sent to the correct address for Ms G at that time. So, although I don't dispute what Ms G says I can't say that EBS Pensions didn't satisfy its obligation to provide the statement – and if it had been received it would have told Ms G that her funds remained in cash.

Ms G says EBS Pensions didn't update her new address when she informed it of the change and that this administrative error compounded the situation especially in respect of receiving statements. So, I've carefully considered a copy of Ms G's request to change her address – dated 28 September 2017. I can see this was followed by a request for proof of address from EBS Pensions and then confirmation that its records had been updated with the new address the following day. I note this request was made after the 2017 SIPP statement had been sent out, and that the next statement to be issued (2018) was sent to the new address. So, I'm not persuaded that EBS Pensions didn't update G's address in a timely manner and I don't think it did anything wrong here.

EBS Pensions did accept that it sent its final response letter to Ms G's previous address having taken the address from the original SIPP application. I can understand why this might have caused Ms G some level of frustration. But the letter wasn't about the statements or correspondence about the investment strategy – so I don't think it would have had much of an impact on the situation, although I think it was an unfortunate error to have made.

Ms G says that, while EBS Pensions says it was waiting for her to give an investment instruction, it did accept her broker's instructions to make the later transfers available for investment. She says it shouldn't have done this without her authorisation. But EBS Pensions T&C's allow for this as they state, *"Where I have appointed an investment adviser, I agree that (the SIPP provider) should accept instructions pertaining to all scheme investments as though received directly from me."* So, as the first transfer was completed, without any investment instruction, before the broker was appointed by Ms G in 2016, EBS Pensions was unable to do anything except hold the funds in cash awaiting instruction. But the T&C's also confirmed it was possible to *"nominate one or more investment managers/advisers to act on an advisory/discretionary basis in the exercise of any investment decision/direction."* So, when the broker was appointed in 2016 it was then authorised by Ms G to make requests for transfers and invest on her behalf.

So, I don't think EBS Pensions acted unfairly in how it treated Ms G (and her broker's) requests for the funds.

What Ms G and her broker think should have happened

Ms G says her broker thinks EBS Pensions ought to have taken four different steps in order to transfer the pensions and provide funds ready for investment. I've looked carefully at what the brokers said and, in my view, EBS Pensions did:

- Request the application form from the broker.
- Know that the process of appointing the broker was complete.
- Contact Ms G in 2016, through an annual statement, to confirm the amount that had been transferred.

Thereafter the stockbroker said, *"I would expect further attempts are made to ensure the SIPP member is able to proceed with their stated investment strategy"*.

However, while that may have been his expectation of what might happen, based on his previous experience, there's no evidence to show that was a part of the process in this case. But in any case, I think the statement from 2016 – which confirmed the transfer had taken place and the money remained in cash, was a clear indication to Ms G that she was able to proceed with her investment strategy.

Ultimately here I think EBS Pensions carried out the transfers as requested and held the funds, in cash, awaiting an investment instruction. This instruction should have come from Ms G and/or her broker but I don't think EBS Pensions was obliged to do anymore than it did to make Ms G aware that her transfer fund had been received and could be invested. And I haven't seen any evidence of errors in the way EBS Pensions carried out the ancillary administrative tasks, such as updating Ms G's address and sending annual statements to the correct address at the time.

My final decision

For the reasons that I've given I don't uphold Ms G's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G to accept or reject my decision before 10 November 2020.

Keith Lawrence
Ombudsman