

The complaint

Mr M complains that Suffolk Life Pensions Limited ("SLP") failed to act on his instructions in a timely manner.

What happened

I have previously issued two provisional decisions on this complaint. The second provisional decision was issued in August 2020 and I summarise it below.

Mr M held pension savings with SLP in a self-invested personal pension (SIPP) arrangement. Whilst the majority of those savings were managed by a third party Mr M retained some of his pension in cash. In March 2019 he discussed with SLP whether he would be able to hold some of that cash in US Dollars (USD) rather than Sterling. SLP advised Mr M that would be possible, and the steps he would need to take to make the transfer.

Around two weeks later Mr M called SLP to make the transfer. He asked for £50,000 to be transferred into USD and the call handler provider Mr M with information about the current exchange rate. He ended the call by telling Mr M that he'd "get that actioned today". And he confirmed with Mr M that he would receive confirmation of the transfer by email when it had been completed.

The following day SLP called Mr M to inform him it was about to make the transfer but had noticed that the exchange rate had deteriorated since his original call. It asked for confirmation whether Mr M still wished to proceed with the transfer.

Mr M indicated that he didn't wish to make the transfer at that day's exchange rate. But he considered that SLP had agreed to make the transfer at the rate given to him on his original call. When SLP declined to make the transfer at that rate he made a formal complaint.

I thought that a strict interpretation of the terms and conditions suggested that SLP was entitled to process transactions later than the day they were received. But I also thought that the call handler, when Mr M gave his instruction for the transaction, failed to make him aware that it might not be processed immediately.

Although Mr M had asked for an indicative rate for a USD transfer around two weeks before I didn't think that meant he should have been aware, or that it was made clear, that the rate he was given when instructing the transaction was similarly indicative.

I accepted that Mr M held funds outside his SIPP. And that if needed he could instead have used some of these funds to increase his holding in USD. So I concluded that not only had SLP failed to provide Mr M with sufficient information about when his instruction would be processed, but that Mr M would have done something different if he'd been given better information. And so he'd have ensured he benefitted from the exchange rate on that day. So I thought Mr M had lost out because of the poor information he was given and that SLP needed to pay him some compensation.

Mr M has told us that he accepts the conclusions I reached in my second provisional decision. SLP does not. And it has provided me with some further comments. Although I am only summarising here what SLP has said, I have considered its entire response carefully before writing this decision.

SLP is naturally disappointed by my provisional findings and considers that I have proposed awarding compensation to Mr M even though no loss was actually incurred. It considers that it has acted in line with its terms and conditions and clearly documented procedures, and has provided me with a further copy of the relevant documents. It remains of the opinion that Mr M was clearly aware that the exchange rates quoted are indicative and not guaranteed.

SLP says that it advised Mr M of the change in the exchange rate and sought his further authority to proceed at the new rate. Since Mr M then withdrew his instruction it thinks his only loss was one of expectation – it says he wasn't denied the opportunity to make other investments. And SLP says that even if Mr M had decided to make the transfer to USD outside his SIPP he would still have needed to withdraw the necessary funds from the SIPP. That would have incurred an income tax liability, and would still have been subject to the same processing timescales meaning it couldn't have been completed on the same day.

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.

Having done so my decision on this complaint remains as set out in my second provisional decision. But I do wish to comment on the points that SLP has raised in response.

As I said in my provisional decision I thought that SLP had acted in line with its published terms and conditions. But I thought that the phone call Mr M had with SLP, during which he gave his instruction for the transaction, needed to be considered alongside those terms. And I still don't think that the call handler made it sufficiently clear to Mr M about the basis on which the instruction would be processed. I think that call should be the over-riding source of the reasonable expectation Mr M would have about when his instruction would be implemented. And what he was told was that it would be "actioned today".

I think it is unfair to suggest that Mr M was "clearly aware" that any rates quoted were indicative. SLP has provided a recording of the call during which Mr M was told that the rates had changed. There is no doubt in my mind that Mr M was shocked to hear that the rate he'd previously been quoted was only indicative. And the fact that he has made this complaint further underlines that his understanding was that SLP had fixed the rate at which the transaction would be completed.

I think SLP has misunderstood what I said in my second provisional decision about the alternative actions Mr M could have taken. In that decision I said that Mr M's testimony was that he holds greater cash deposits outside his SIPP than within it. So there would have been no need for Mr M to make a withdrawal from his SIPP in order to complete the transaction with his bank. I think that, if SLP had given him better information, that is what he would have done and so his loss can be quantified – I don't think it is simply a loss of expectation.

Putting things right

It is difficult for me to put Mr M back into the position he would have been if the transaction had taken place on the date it was originally instructed. Whilst I could direct that the transaction should be completed at the rate described on the telephone call that would not fairly reflect what might have happened to that currency over the following year. As Mr M declined to proceed with the transaction at the revised rate he didn't crystallise any loss at that point.

I think the fairest way to resolve this matter is to look at the difference between the exchange rate that was quoted on the original call, and the rate that was offered to Mr M the following day. On the original call Mr M said that he wanted to exchange £50,000 to USD. He was quoted an exchange rate of 1.3332. He was told that the currency he would purchase would be \$66,660. The following day the rate had fallen to 1.2829. He was told he would now be able to purchase \$64,065.

As I said earlier, Mr M did not proceed with the transaction. But if he had done so, it would have cost him an additional £1,960 to receive the same amount of USD as he'd been quoted the day before. I think that is a reasonable proxy for the loss Mr M has suffered.

So I think SLP should increase Mr M's GBP cash holding by £1,960 with effect from 28 March 2019. And should there have been any further investments from Mr M's GBP account since that date a proportion of the additional £1,960, equal to the proportion £51,960 formed of his whole GBP fund at 28 March, should receive a similar investment return.

I am not making any further award to Mr M for any inconvenience he's been caused by the poor information he was given. Nor am I making any direction about any charges Mr M might incur if he decides to move his SIPP to another administrator.

My final decision

My final decision is that I uphold Mr M's complaint and direct Suffolk Life Pensions Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 30 September 2020.

Paul Reilly
Ombudsman