

The complaint

Mr B complains about the amount of time it took Utmost Life and Pensions Limited to transfer his personal pension from it to another pension provider. Mr B says that he has lost out financially due to the delay.

What happened

Mr B instructed Utmost to transfer his personal pension to a company I will refer to as Company A. Utmost received Mr B's instruction on 9 March 2020. On 11 March Utmost received a letter from Company A asking for information before it could proceed with the transfer. The information included details of the type of pension Mr B had. This information was needed by Company A so it could confirm whether it was able to accept the transfer. Company A also needed – discharge forms (if required) and details of the current scheme, including the value and details of any safeguarded benefits. Company A's letter said that if the details weren't provided it would have to get in contact again to confirm them.

Company A didn't receive a response to its 9 March 2020 letter. So, it sent a further letter chasing up this information. Utmost received this second request for information on 27 March, but the information still wasn't provided.

On 7 April 2020, nearly a month after its first request, Company A sent Utmost an email requesting the information again.

On 8 April 2020, Utmost provided the necessary details, which enabled Company A to progress the transfer on 9 April 2020. The transfer was completed on 16 April 2020 – within three working days.

Utmost required written confirmation that Company A could accept the transfer. It also asked for its bank account details to make the payment and a copy of its HMRC registration certificate which Company A provided in a timely way.

Mr B chased up his transfer request for almost a month. To do so, he made a number of phone calls and sent emails. Mr B said this caused him stress and frustration, having to go between the two firms to progress a simple request. At the same time, it seems, Company A was chasing up the information from Utmost, with no response.

Utmost accepts it first received the information request on 11 March 2020, but didn't respond to that request. Utmost said that it could have taken between 10-15 working days to respond to this request and that due to Covid-19, this caused a delay. Utmost says that after it received the paperwork from Company A on 9 April, asking it to proceed with the transfer, the transfer went ahead in a timely manner.

Mr B complained to Utmost, who acknowledged that it hadn't responded to the initial requests for information, but felt it wasn't responsible for any financial loss that Mr B may have suffered. Utmost didn't offer Mr B any compensation for the distress and

inconvenience caused. Mr B remained unhappy and referred his complaint to our service.

Our investigator looked into Mr B's complaint and concluded that Utmost didn't respond in a timely way to Company A's information request regarding Mr B's transfer. Neither did our investigator think that 10-15 days was a reasonable turnaround time for this information to be provided. But, he noted, in any event, it had taken Utmost longer than that to respond.

He said our service generally thought around 10 working days was sufficient for a transfer of this type. To illustrate that this was a reasonable timeframe, our investigator pointed out that when Mr B applied to transfer the remainder of his funds in June 2020, the transfer was completed within 10 working days.

Our investigator took the view that Utmost was solely responsible for the delays. He concluded that had Utmost dealt with Mr B's transfer request in an appropriate way, it would've been completed by 25 March 2020.

Our investigator concluded that although there was a national lockdown later in March 2020, the first information request was received by Utmost before this. So, had matters been dealt with in a timely way, this shouldn't have affected the timescale for making the transfer. He noted that once the information was provided, despite the lockdown, Utmost proceeded to make the transfer within 3 working days.

Our investigator recommended that Mr B's complaint was upheld and that Utmost should pay Mr B £100 for the trouble and upset he was caused by this. Further, that Utmost should calculate the amount of units that would have been sold to enable a transfer of £350,000 of Mr B's pension to Company A had the sell down taken place on 20 March 2020. Utmost should then compare this to the units that were sold down on 9 April 2020 and make up any difference. The investigator said that if this shows that Mr B was disadvantaged by the delay, then this needs to be accounted for. For example, if less units would have been sold to achieve the transfer value, more units would have remained invested as part of his plan and the amount that was transferred in June would most likely have been higher.

Utmost said, in summary, that its transfer request form required three bits of information to be provided:

- written confirmation the receiving company could accept the transfer;
- their bank details for payment; and
- a copy of their HMRC certificate.

Utmost said the form it was sent by Mr B said that written confirmation was to follow from Company A. Utmost said it waited for Company A to send on written confirmation and relied on an email dated 31 March 2020 from Mr B that told Utmost that Company A would be shortly emailing confirmation.

Utmost said it was unfair to compare the turnaround times for the March 2020 transfer request with the June 2020 transfer request. This was because during 2020, Utmost experienced a higher volume of policy holder requests than normal, above the levels it had assumed. These high volumes coupled with the Covid – 19 pandemic restrictions (which meant it had to mobilise staff working from home), led to response times being beyond typical time scales for completing such requests.

It recognised that the transfer took longer to progress than it would typically have, but given the wider circumstances, said it was not appropriate to pay redress. Further, Utmost said, the fund was placed in a Secure Cash Investment when it was transferred to Utmost. Whilst in that fund the unit price was guaranteed not to go below the price at the initial investment date.

Mr B also made representations on the way redress was to be calculated. He said, in summary, despite Utmost's additional workload, he was told on 6 March 2020 by it, that it would take five to seven days from receipt of Company A's confirmation to transfer. Also, he said it was reasonable for the investigator to take into account the time it took to deal with the June 2020 transfer request as this was after the national lockdown.

Mr B said the effect of the delay on the interest accruing in the cash fund was minimal, but the delayed investment through Company A was substantial, despite his efforts to mitigate it. He said he had lost out financially due to the delay because he was unable to invest when the market was at a low.

Utmost didn't agree with our investigator's view. As agreement couldn't be reached Mr B's complaint came to me to decide.

My provisional decision

I issued my provisional decision on Mr B's complaint at the end of July 2021. I said I was minded to uphold Mr B's complaint, but I proposed to make a different order for redress than recommended by the investigator. I gave the parties the opportunity to make further representations, if they wished to.

Mr B's response to my provisional decision

Mr B said he was pleased I'd accepted that Utmost was responsible for the delay, but was unhappy that he should be left to suffer the opportunity costs arising from the delay.

He asks that the question of compensation is reconsidered. In support of that, he says in summary:

- Utmost was cavalier in attitude, blaming it on Company A and also, blaming it on him for not providing Company A's bank details and confirmation the business could accept the transfer;
- Utmost is now querying his good faith, suggesting that he is now trying to say how he would've invested having the benefit of hindsight. He says he has twice experienced an issue like this before;
- he made every effort to speed up the transfer and was aware of the delay, which was of Utmost's making. This included:
 - asking whether he could do anything to speed things up, upfront;
 - spending many hours, over a period of weeks, trying to expedite the transfer; telephoning both parties, with Utmost claiming it could not speak to Company A;
 - during repeated calls making it clear that he wanted to invest urgently;
 - the fact that Utmost was receiving an unexpected volume of transfer requests suggests he was not alone in identifying market opportunities;
 - he noticed cash being credited on 21 April. The market having recovered considerably by then, it was much less of an obvious buying opportunity. He invested around £20,000 the following day and by 24 April had invested £60,000, £108,00 by the 28th April and, £201,000 by 28 May and £298,000 by

end of June.

- As an experienced professional, used to handling his family's investments, his intention was to maximise the return and he was denied this opportunity;
- his decision not to buy some shares was based on the share price increasing such that he had missed out on what he saw as an outstanding opportunity;
- by 26 March 2020, he considered that the market had turned. He had not tried to argue that he would have bought at the bottom of the market (15 March) but that in the month from 23 March, he would have had better opportunities.
- He considers that he has set out what he considers to be fair compensation in some detail in his earlier representations and asks that this is considered again.

Utmost's response to my provisional decision

Utmost disagrees with my decision that it was solely at fault. In summary, it gives these as its reasons why:

- On 1 April it telephoned Company A on the number provided to find that it was not taking calls. Had it been taking calls, it would have been able to supply any additional policy information Company A may have needed during that call. It seems Company A was affected by the Covid 19 pandemic, as were all businesses;
- Its requirements were clear at a much earlier stage than 8 April and Company A should have been familiar with these requirements as they are standard requirements for transfers, particularly given the large proportion of transfer requests made to it by Company A.
- Its requirements were clearly explained on the transfer payment form and during several calls with Mr B. Mr B was told on 25 February, 26 February and on 6 March that the transfer payment form would need to be completed, a confirmation letter from Company A agreeing to accept the transfer would be required and it would need to provide its bank details and provide a copy of its HMRC certificate. During each call it explained that the relevant form could be downloaded from its website. It also told Mr B the transfer could take several weeks to complete. During the call on 26 February, Mr B mentioned that Company A had told him the transfer could take several weeks.
- Mr B ticked to the box to say the written confirmation was to follow. He also emailed on 31 March to say he'd asked Company A to send this information. Utmost relied on this information.
- Its normal service of 10-15 days for servicing requests for forms and information is not unreasonable. Once it receives all the required information it aims to complete the process and make payment within 5-10 working days. It believes as a business it is entitled to set service levels and that its levels are reasonable.
- It disagrees that around 10 working days is sufficient for a transfer to take place from start to finish. This might be possible if the all the information needed was provided by the client and receiving scheme in one go, but that is rarely the case.
- It's not fair to judge the service provided during Mr B's first transfer in March/April 2020, against the standard that applied during the second transfer in June 2020. By the time of the second transfer, the client, Company A and Utmost had all learned from the experience of the first transfer and it proceeded more smoothly, particularly as Company A understood the requirements on it.
- The circumstances in March 2020 were unprecedented. The transfer request was received during a period of extremely high work volumes following the transfer of business from Equitable to Utmost. There was pent-up demand from policyholders who had remained with Equitable until they received substantial uplifts in the policy values in January 2020. Mr B received an uplift of 75% of his policy value.

- Extremely high work volumes, combined with Covid 19, meant that it had to develop and implement a home working model for its Customer Services operation, this led to response times increasing beyond typical timescales.
- It recognises that the first transfer took longer than it would typically. However, under the circumstances, it considers its response time was not unreasonable and redress should not be paid. Some allowance should be made for these extraordinary circumstances and the conclusion that the transfer should have been completed in 10 working days should be reviewed.

Mr B's complaint comes back to me for a decision.

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 considered carefully Mr B and Utmost's further representations. Having done so, my view has not changed that I should uphold this complaint and make the order for redress set out in my provisional decision. For the most part, the representations cover points already considered in my provisional decision. Where there is new information, which has a bearing on my decision, this is covered in this final decision. Otherwise my final decision is largely the same as set out in my provisional decision.

In my view, Utmost did not deal with Mr B's request to transfer in a timely way. I've considered whether the delay arose directly as a result of the unprecedented world events of a worldwide pandemic that were unfolding at the time. However, I can see that the information request made by Company A was received by Utmost on 11 March 2020, before the national lockdown. I also agree that a more usual timeframe to deal with a transfer request of this nature might be around 10 working days. Mr B says his transfer request took 29 days from start to finish.

I think it should have been clear to Utmost that Company A needed information from it to confirm whether it could accept the transfer. Further, that until it had that information, it could not complete the transfer form. Without that information, it could not say that it could accept the transfer.

Prior to the email of 31 March 2020, that Utmost says it relied on, there were two unanswered requests for information from Company A, so I don't accept Utmost's explanation as to why it did not respond sooner. Also, of note, it did respond to the request before the transfer went ahead.

Utmost said in its response to my provisional decision that it called Company A on 1 April 2020, only to find that Company A was not taking calls. I think Utmost likely made this call because it was responding to Company A's earlier requests for information. So, I think this also tends to suggest that little or no reliance was placed on the email of 31 March 2020. Instead it was more likely that Utmost just hadn't got around to dealing with the information requests sooner.

Further, I've not been told by Utmost that having found that Company A was not taking calls, it emailed its response to the 9 March 2020 and 27 March 2020 enquiries to Company A. Instead, it seems, that it waited for Company A to contact it again on 7 April, before providing the information requested on 8 April. As soon as Company A had this information it then 'met' the requirements, referred to as 'standard requirements' by Utmost the next day on the 9 April.

It took Utmost around 20 working days just to respond to the information request. This was largely what led to the delay. So, even if I were to accept what Utmost has to say about reasonable service targets for dealing with information requests and forms (10-15 days) it didn't meet its own targets and this meant that a process that feasibly could be completed in 10 days (as Utmost accepts if everything is in order) took way beyond that to complete.

I accept that the worldwide pandemic was unprecedented and impacted on many businesses, requiring immediate adjustments to ways of working. However, the increased demand for transfers after January 2020 after these uplifts had been applied, was foreseeable in the context of Utmost managing its operations and these transfer delays.

Notably, once the information was provided, the transfer was processed by Utmost in a timely way in April 2020, within three working days, despite the country having only recently gone into lockdown.

Further I've noted that in June 2020, during the national lockdown, Mr B's subsequent transfer request was dealt with, within 10 days overall. I still consider it reasonable to take this into account, as it seems Utmost was able to deal with the transfer within this timeframe in spite of the national restrictions and high volumes of work. I've heard what Utmost has said about lessons being learned from the first transfer, but I remain by the view that the reason for the first transfer taking so much longer is that it took Utmost 20 days to respond to a pretty basic information request.

I therefore think that Utmost has done something wrong here.

When considering redress, this service looks at whether there has been any non-financial loss and/or any financial loss suffered. Where there is financial loss, it looks to put the person back in the same position that they would've been in but for the error or omission.

Financial loss.

Mr B says his financial loss arises from investment losses, whilst he was waiting for his personal pension to be transferred to Company A. Our investigator took the view that Mr B's transfer would've been completed by 25 March 2020, had Utmost dealt with the transfer request as it should. For the same reasons as given by our investigator, I think it's reasonable to use the 25 March 2020 as the transfer date, when assessing fair compensation.

Mr B has provided us with details of the investments he made once the money was accessible in his new account on 21 April 2020. He very fairly says that he is, unable to say exactly what shares he would have bought with the £350,000 transfer, when he would have bought them and what prices he would have had to pay had the transfer gone through earlier. He acknowledges this was a volatile time in the investment markets due to the pandemic, and notes 17 March 2020 was the market low point. If Utmost had not done anything wrong, the transfer wouldn't have been completed by this date. Mr B has said in his recent representations that in the month from 23 March 2020 onwards he would have had better opportunities available to him, than he had after 21 April 2020. He asks me to review my position on compensation. He has provided me with some information about how the market performed around that time, which demonstrates how volatile it was.

Mr B says he was minded to make three investments immediately upon transfer. Following the transfer, he said he immediately made three purchases. He also says he made three

the following week and two the next. He said as the market had recovered by the time of transfer, when making his investments, he decided to invest his cash over a longer period than would have been the case, had the transfer gone ahead in March 2020. Mr B says he would have invested more of the cash more quickly, while the market was recovering, if the transfer had gone through sooner.

Mr B said he did not make one of the investments he planned to, the share price being too high compared to the March low point. He said he also invested less in another planned investment at the outset, investing more in June 2020. Mr B referred to a loss of £20,566.

Based on what I've seen, I remain of the view that I can't fairly say how Mr B probably would've invested some or all of his money following transfer. The investment markets were volatile at that time. With the benefit of hindsight, it can now be seen that the market was at its lowest in March 2020, and rose again in April 2020, but this wouldn't have been known at the time of investment against given the uncertain nature of the backdrop at the time. I can't fairly quantify Mr B's investment loss, particularly as he changed his investment plans, taking account of the prevailing circumstances.

The investigator recommended a methodology for assessing financial loss comparing the number of units that had to be sold in April 2020 to transfer £350,000, compared to the number of units that would've had to be sold in March 2020. I consider this to be a fair way to assess Mr B's financial loss.

Non-financial loss

It seems clear, however, that Mr B missed out on an opportunity to invest sooner as a result of Utmost's failure to pass on information to Company A. I think it would be fair for Utmost to compensate him for this loss of *opportunity*. I currently consider that £750 is a fair and reasonable amount and is in line with other awards made by this service.

I think Utmost caused Mr B some trouble and upset as he had to chase up his transfer request, going between both companies, for around a month. Like our investigator, I think the reason for the delay was down to Utmost not responding upfront. to Company A's information request in a timely way. I'm ordering Utmost to pay Mr B £100 compensation for the trouble and upset caused, an amount also in line with other awards made by this service.

Taking everything into account, I therefore uphold Mr B's complaint.

Putting things right

I make the following order for Utmost to put things right.

To compensate Mr B fairly, Utmost should calculate how many units were sold down on 9 April 2020 to transfer £350,000 of Mr B's pension pot to Company A. It should then compare this with how many units would've had to be sold down on 20 March 2020 to provide a transfer value of £350,000. If it is shown that Mr B was financially disadvantaged by the delay as a result of more units having been sold down in April 2020, then this needs to be accounted for.

If less units would have been sold to achieve the transfer value in March 2020, more units would have remained invested in his cash fund and when it came to transfer his plan in June 2020, it would have consisted of more units. Utmost should calculate the cash value of the difference in the additional units that would have remained invested in his plan until June 2020 and pay this into Mr B's pension fund, where possible.

Utmost should also add simple interest to the difference in the cash value of the units from the date of the later transfer in June 2020 to settlement. The rate of interest is 8% a year†.

If there is a loss, Utmost should pay this into Mr B's pension plan to increase its value by the amount of the compensation and any interest. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

If Utmost is unable to pay the compensation into Mr B's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore, the compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid.

The *notional* allowance should be calculated using Mr B's actual or expected marginal rate of tax at his selected retirement age.

For example, if Mr B is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. However, if Mr B would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.

Income tax may be payable on any interest paid. If Utmost deducts income tax from the interest, it should tell Mr B how much has been taken off. Utmost should give Mr B a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

As I've already said, Utmost should also pay Mr B direct £100 compensation for his trouble and upset and £750 for his loss of investment opportunity.

My final decision

I uphold Mr B's complaint and order Utmost Life and Pensions Limited to put things right as set out.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 5 November 2021.

Kim Parsons
Ombudsman