

The complaint

Mr W complains that London & Colonial Services Limited (London & Colonial) caused delays to the transfer of his self invested personal pension (SIPP) to a new provider. He says these delays caused him a financial loss as well as the opportunity to invest into his new funds earlier. He is also unhappy about the lack of response to his complaint.

What happened

Mr W had held a SIPP with London & Colonial since 2010. Following the receipt of compensation from a previous complaint about his SIPP he decided to transfer the funds to a new provider and asked his adviser to make an application. He wanted the cash held in the SIPP to be transferred straight away and then for the remaining assets to be sold and then transferred as cash.

This request was made by Mr W's adviser on 5 March 2020. The electronic transfer system used by providers in these cases (Origo) showed the transfer was requested on 13 March 2020. Mr W says he didn't receive any notification that the request had been received. Neither the new provider nor Mr W's adviser had been able to confirm progression of Mr W's application, so he contacted London & Colonial on 7 May 2020 to find out the current position of the transfer.

On 14 May 2020 Mr W received a response and was told the available cash would be transferred immediately and *"that a communication is being issued to each of the above investment providers requesting the liquidation of these remaining assets and return of the proceeds to the scheme bank account."*

Cash from the sale of further assets was received on 21 and 26 May and 1 June 2020. This amount of £88,089.73 was transferred to the new provider on 5 June 2020. The remaining two assets were sold, and proceeds received on 12 June and 21 July 2020. This final amount of £9,854.88 was then transferred to the new provider on 30 July 2020.

Mr W had first complained to London & Colonial on 4 May 2020 about the poor service he thought he'd received. But on 24 July 2020, when the final transfer was about to be made, Mr W asked London & Colonial to update him on the calculation it said it would carry out to see if he'd been disadvantaged as a result of the delay in liquidating his investments.

London & Colonial didn't respond to Mr W's complaint, so he brought it to us where one of our investigators looked into the matter.

He said Mr W's complaint should be upheld because there was no reasonable explanation for why the assets or cash couldn't have been transferred earlier. He noted that when Mr W chased up his initial transfer request around two months later only one of the assets had been sold. He said London & Colonial should calculate the position of Mr W's SIPP as if it had been transferred to the new provider within the same funds but by 20 March 2020.

Mr W accepted the investigator's findings, but London & Colonial, who had previously provided us with information about a different complaint of Mr W's, failed to respond to our requests – so the complaint was referred to me to review.

My provisional decision

In my provisional decision I said the complaint should be upheld but set out a different redress method than the investigator. I gave the following reasons in support of my findings:

- There was no evidence to show that the transfer process began when it was input on the electronic transfer system.
- There was nothing to show that, following the request being made, London & Colonial tried to sell the underlying investments within Mr W's SIPP or attempted to transfer the cash sum that Mr W had asked to be transferred straight away.
- Without any plausible explanation for this delay I thought London & Colonial was responsible. When Mr W chased up the transfer in May 2020, London & Colonial confirmed it had caused the delay and would be determining the extent of any financial loss that Mr W had suffered.
- But London & Colonial's usual policy wasn't to transfer individual tranches of cash – so I had to consider whether it would be reasonable for me to say that it should have done that in this case – as I thought it had probably made the later individual transfers simply because of its poor service to Mr W.
- As a result I thought London & Colonial should carry out a calculation to work out the position Mr W would now be in had the transfer progressed on 14 March 2020, the day after the transfer request was made, but based on the actual progress that was made with the transfer after 14 May 2020. This was the date that London & Colonial transferred Mr W's cash and started to receive the proceeds of some of his disinvested assets.

Responses to my provisional decision

Mr W broadly accepted the provisional decision but said that he believed if he hadn't chased up London & Colonial the transfer wouldn't have completed when it did. He didn't think London & Colonial had provided a good service and had failed to manage his SIPP.

London & Colonial said that, on this occasion it recognised that Mr W's transfer wasn't carried out in a timely manner. It agreed the complaint should be upheld and that it would carry out a loss calculation to establish the extent of any financial loss. It also confirmed it had already waived the fees that were due for completing the transfer.

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, as both parties broadly agreed with my provisional decision, I see no reason to depart from my findings.

What did happen?

I've seen a screenshot of the "Origo" electronic transfer system which showed that Mr W's adviser's request that his SIPP be transferred from London & Colonial was accepted on 16 March 2020.

No acknowledgement of this request was received, and the adviser chased up London & Colonial for a progress report on 6, 15 and 20 April 2020. Mr W himself chased up matters in May 2020, and following a review of the transfer, London & Colonial said it would be transferring the available cash within the SIPP immediately and would send a communication *“to each of the above investment providers requesting the liquidation of these remaining assets and return of the proceeds to the scheme bank account”*.

Following this communication cash from various sales of assets was received during May 2020 and transferred to the new provider. The remaining assets were encashed during June and July 2020 and the final proceeds were transferred on 30 July 2020.

But London & Colonial hasn't provided any justification for the failure to transfer the cash that was in the SIPP when instructed to do so – or to begin selling the other remaining assets before Mr W contacted it on 14 May 2020. And it has also subsequently told us that it accepts it didn't progress the transfer in a timely manner and will undertake a redress calculation in order to determine the potential financial loss Mr W may have suffered.

What I think should have happened?

So I've looked at what should have happened here. I think that, although London & Colonial had a policy to only transfer cash in one amount rather than using multiple transfers, it should have transferred the cash sum of £146,584.49 that was held in Mr W's SIPP upon receiving the transfer request. I know I said this should have been the day after the initial request in my provisional decision, but I've now seen that wasn't a working day – so I think the initial transfer of cash should have happened on 16 March 2020.

The emails that were exchanged between Mr W and London & Colonial around 14 May 2020 made it clear that London & Colonial agreed that *“we have caused a significant delay and that we will be collating the sales information to determine the extent of any loss with a view to putting this right as previously confirmed to you in both of my earlier emails today”*. This has also been confirmed in London & Colonial's response to my provisional decision. So I have to look at the effect that London & Colonial's actions after 14 May 2020 had on the overall transfer, as I think this was the date that work on the transfer began in earnest. I have taken into account that Mr W has been consistent in his view that the individual transfers of cash in June and July 2020 only happened because of the pressure he applied to London & Colonial to progress matters.

But London & Colonial also said in its email that, *“It isn't our usual process to send multiple payments. We send the sale requests off all at the same time, and process the funds once all liquidations have been completed into the bank account.... We would usually wait for all cash to be in your SIPP bank account. Leave with me and I'll see what I can do in this instance”*. So, I'm satisfied that it wouldn't normally have transferred the individual sales in this case, I think it changed its policy simply because it had provided Mr W with such poor service and this was a way it could try to improve that service.

So, while I can understand Mr W's frustration at having to spend time chasing up each sale, I think that on 14 May 2020 London & Colonial requested the sales of the remaining investments and would normally have “banked” the cash from those sales and transferred it at the end of the process.

Although Mr W may have benefitted from London & Colonial's actions to make up for its poor service by transferring each sale shortly after Mr W chased it up, I don't think this would have been the situation if London & Colonial hadn't caused any delays – and my purpose here is to put Mr W as close to the position he would now be in had the delay not occurred. I've concluded that the additional benefit Mr W did receive from each sale being transferred

soon after the cash was released is broadly “balanced out” by the inconvenience of him having to continually “chase up” London & Colonial.

So I don't think any adjustments need to be made for the process after 14 May 2020 as I think this unfolded within the normal timescale of what I would have expected for such sales and transfers. London & Colonial has given reasonable explanations for any delays which occurred here – and I don't think it can be held responsible for the delays which principally were caused by other factors outside of its control.

Putting things right

My aim is that Mr W should be put as closely as possible into the position he would probably now be in if the transfer of his SIPP hadn't been delayed.

What must London & Colonial do?

To compensate Mr W fairly, London & Colonial must:

- Compare the actual current value of Mr W's SIPP against a notional value, as at the date of this decision, which assumes the transfer had progressed along the same timeline as it did following 14 May 2020, but if it had begun on 16 March 2020 – the next working day after the Origo request was received.. So the position needs to be calculated if the transfer had been completed two months earlier, on 30 May 2020, but with each individual transaction included at the same point in the notional timeline as it occurred within the actual timeline – effectively two months earlier on each occasion.

If the actual value is greater than the fair value, no compensation is payable.

If the notional value is greater than the actual value there is a loss and compensation is payable.

London & Colonial should pay into Mr W's pension plan to increase its value by the total amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

If London & Colonial is unable to pay the total amount into Mr W'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 total amount should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr W won't be able to reclaim any of the reduction after compensation is paid.

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

It's reasonable to assume that Mr W is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%.

However, if Mr W would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

- Pay to Mr W £100 for the disruption caused to his retirement planning.

Additional interest of 8% simple a year is to be added from the date of this final decision to the date of settlement if settlement isn't made within 28 days of London & Colonial being notified of Mr W's acceptance of that decision

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

My final decision

I uphold the complaint. My decision is that London & Colonial Services Limited should pay the amount calculated as set out above.

London & Colonial Services Limited should provide details of its calculation to Mr W in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 7 June 2022.

Keith Lawrence
Ombudsman