

The complaint

Mr O complains about Magus Private Wealth Limited's (Magus) role in the delay to the transfer of his self invested personal pension (SIPP) to a new platform. He says the delay meant his fund dropped by over £100,000 for which he would like to be reimbursed.

What happened

Because Mr O has made complaints about the main three parties involved here, I've decided to refer to them all by name at various points in each complaint to better explain the sequence of events. This decision is solely to provide an outcome for the complaint against Magus.

Mr O had held an existing SIPP with Standard Life since 2015, although he'd held a personal pension with it since 1984. Mr O had become disappointed with the SIPP's performance and so in early 2020 he met with Magus to discuss his retirement planning options – which were summarised in a report issued to him on 31 January 2020. Magus recommended that Mr O transferred his existing SIPP to a new pension platform and invested in its own model portfolio containing 60% equities and 40% fixed interest investments – which Mr O accepted.

So on 5 February 2020 Magus submitted Mr O's transfer request to the new platform. An accompanying covering letter said *"It is my wish to transfer my pension fund held within the above numbered SIPP to (the new platform). Please could you therefore authorise Aberdeen Standard Capital to sell down all of the conventional return portfolio to cash to be returned to yourselves in anticipation of the transfer. Please can all of the target return portfolio also be sold down, wherever possible, and the cash retuned to yourselves."* The letter also requested that a suspended fund within the SIPP be re-registered to the new platform and that any queries should be directed to Magus.

On 10 February a transfer request "pack" was sent to Standard Life by the new platform and this was acknowledged as being received on 13 February 2020. At this time the SIPP was valued at £913,440.

Standard Life says the new platform wanted the "SEDOL" codes of each fund to be included in a valuation which was to be returned to the platform. So, on 28 February 2020 Standard Life requested this information from the fund manager, Aberdeen Standard Capital (ASC), which was provided on 2 March 2020.

Because Mr O had now discovered that the transfer hadn't taken place he asked Magus to chase up matters and following a direct progress update request to ASAC, it was confirmed that the funds could now be sold – but ASC required further confirmation from Magus that the transfer should proceed, as the value of the SIPP had fallen to £843,574.55. Magus wasn't prepared to provide that confirmation.

But by 23 March 2020 Magus said its position *"remained unchanged"* from the time of its original request and it was agreed that the SIPP funds would be sold. By 1 April 2020 the

funds had mainly been realised to a total of £789,492.43. Further cash from sales was received during the following week. An application was then made to purchase the new funds which completed on 15 April 2020 when the in-specie part of the transfer began. This completed on 29 April 2020 and by 21 May 2020 the remaining funds were transferred, and the SIPP was closed – with a final transfer value of £803,264.75.

But as Mr O had expected the transfer to complete by the original *proposed* date of 13 February 2020 – when his plan was valued at £913,440, he calculated that he'd lost over £110,000 and complained to his adviser who then complained to the other two parties involved.

Mr O says Magus was confident that its complaints would be upheld and when he questioned what would happen if they weren't, he says Magus told him that it would address any financial losses he'd suffered. But as the complaints against the other parties weren't upheld and he wasn't compensated, Mr O complained to Magus and asked for a refund of the fees he'd paid as well as redress for his financial loss – shared between Magus and the other parties involved.

Magus didn't uphold Mr O's complaint. It said it sent a written transfer request to the relevant parties in good faith and expected them to instruct the sale and progress matters in a timely manner. It said it couldn't control the speed at which those parties processed the transfer – but didn't think it could have done anything differently or affected the outcome.

But Mr O believed he had lost out financially because of the delay through no fault of his own, so he brought complaints about all the parties involved to us.

One of our investigators looked into the matter relating to Magus and said this wasn't a complaint we should uphold. She said that Magus did send an instruction to the new provider in a timely manner and chased up the sale and transfer request on a number of occasions. But she did think Magus caused an unreasonable delay of 13 days by not instructing the sale of the portfolios within the SIPP on 10 March 2020 when ASC was ready to process them.

However, as she had been provided with a calculation that showed Mr O's SIPP would be worth over £13,000 less today if the transfer had occurred on 13 February 2020, she decided Mr O had gained from the delay and it wouldn't be appropriate to ask Magus to revise Mr O's position so that he was now worse off financially.

Mr O didn't agree. He said there was no correlation between the original SIPP funds and the new ones – so he didn't think it was fair to add a value to the funds after the transfer had occurred. He remained of the view that the amount of funds transferred was over £110,000 less than should have been transferred and that would have been the basis on which to calculate the growth on the new funds.

The investigator remained of the view that Mr O hadn't suffered a loss. Mr O then asked for his complaint to be referred to an ombudsman – so it was passed to me to review.

My provisional decision

I issued a provisional decision on the matter on 31 May 2022. In that decision I said Mr O's complaint should be upheld. In summary, I made the following points in support of my decision:

- The main part of Mr O's complaint was that he said his instruction to sell most of the assets in his SIPP to cash was quite clear in his covering letter of 5 February 2020.

He thought the request to encash should have been carried out as soon as it was received by Standard Life. I'd dealt with that part of the delay in the separate complaint against Standard Life.

- So I didn't think it was fair to put any responsibility for that particular period of delay – from 27 February 202 until 10 March 2020 - on Magus. And I concluded that it probably took the right approach in sending Mr O's request to the new provider in the first place.
- But I didn't think Magus acted fairly after it established that the funds could be sold by ASC. I thought it should have allowed the sale to take place at that time instead of instructing ASC to put the sale on hold while it confirmed the position with Mr O.
- I thought Magus was responsible for any losses which might have occurred as a result of the delay in the sale of the SIPP's assets from 10 to 23 March 2020.
- I explained that a calculation had already been carried out, which showed that Mr O had in fact made a financial gain of over £13,000 based on the dates that were used to determine any prospective loss.
- But I wasn't satisfied that the dates used were consistent with what I thought should have happened. So I asked Magus to carry out another calculation, comparing the notional value of Mr O's SIPP if the assets had been sold 13 days before they were – with the actual value of his SIPP.

The following is taken directly from the relevant section within the provisional decision:

"The transfer request"

On 5 February 2020 Magus sent a transfer request to the new platform with a covering letter from Mr O, which said that "It is my wish to transfer my pension fund held within the above numbered SIPP to (the new platform). Please could you therefore authorise Aberdeen Standard Capital to sell down all of the conventional return portfolio to cash to be returned to yourselves in anticipation of the transfer".

I've seen a copy of this letter which the new platform sent to Standard Life – and was acknowledged as being received on 13 February 2020, along with a copy of the transfer request. This constituted the "pack" which has previously been referred to.

And the crux of this complaint is that Magus and Mr O have said that when the request was received by Standard Life the saleable assets should have been sold to cash immediately as its instructions were quite clear. I've dealt with this matter in the complaint against Standard Life, in which I concluded that the covering letter ought to have alerted Standard Life to the fact that the majority of Mr O's assets – apart from one illiquid fund, needed to be encashed immediately. So I said, even allowing for its 10 day turnaround service standards, it should have asked ASC to sell the funds at the end of this period which I thought could have been completed within two working days thereafter.

So, based on those findings it wouldn't be reasonable for me to put any of the responsibility for that delay on Magus. I have considered Standard Life's argument here that Magus could have directed its request to sell the portfolios directly to ASC in the first place.

And I've seen evidence in the form of a number of emails that Magus had a good ongoing relationship with ASC – which is supported by its direct approach on 10 March 2020, when it questioned why the assets hadn't already been sold. But, on balance, I think it was the right approach to send the request to the new provider in the first instance, so although Magus could have taken an alternative approach I didn't think it did anything wrong in taking the course of action that it did.

But I've also considered the situation on and around 10 March 2020 when ASC confirmed to

Magus that it was then able to sell the funds. I've listened to a call recording between the two firms on the same day in which Magus told ASC to put any sales on hold until it had confirmed matters with Mr O – because of the significant fall in the value of the fund. This position was confirmed in a subsequent email which stated that, "Further to our telephone conversation earlier this morning, I have now received the instruction from the SIPP provider. Just to confirm, although we have received an instruction from the SIPP Provider to sell down the portfolios, we will not sell down these portfolios now, instead we will wait for your instruction owing to the recent difficult market conditions."

It wasn't until 23 March 2020 that Magus confirmed its position in an email which said, "our position is clear. The instruction to sell was received and acknowledged by Standard Life on 13th February and that is our position. Our complaint email of 12th March reaffirms this position. Magus should not be responsible for any loss from 11th March to today. Please take whatever action is needed to address this situation which has sadly created a totally unnecessary level of stress for my client."

ASC took this as an instruction to continue with the sale and transfer which was then progressed until it eventually completed in May 2020.

But I think Magus should have mitigated Mr O's position on 10 March 2020 and allowed the sale to take place at that time. I say that because the sale was time critical and should have continued as per Mr O's initial request and any financial loss which might have subsequently been discovered could have been calculated up to that point. After all Mr O's intention was always to have sold before transferring and there's no evidence to suggest he wanted the sale to be delayed while confirming whether he was comfortable with any market losses. However, if it's Magus' position that, in delaying, it was in fact acting upon Mr O's instruction, it should provide the evidence of this.

So, while I don't believe Magus was responsible for any losses which might have been incurred as a result of delays up to 10 March 2020, I consider that it should have allowed the sale to continue on 10 March 2020 as originally planned, and I think Magus should calculate any losses that may have occurred from the delay of the sale from 10 March 2020 to 23 March 2020. I've set out below what I think Magus should do to correct this position.

The calculation to determine any loss

Looking at the calculation supplied by Magus, on which it had based its decision that Mr O hadn't suffered a financial loss, I'm persuaded that it was carried out in line with the method we would have recommended. Magus had calculated that, as of 8 July 2020 – the date that it carried out the calculation - Mr O's SIPP was worth over £13,000 more than if it had been encashed and invested without delay and according to the transfer request.

So I asked for further calculations from Magus but also from the platform involved as I thought it had the ability to be able to provide notional figures of what should have happened if there hadn't been a delay.

Mr O was provided with a copy of these calculations, but he didn't accept them. He said it wasn't possible to combine "actual" and "theoretical" values because the original fund no longer existed and there was no correlation between that fund and the one that he transferred to. He said that the fund that was eventually transferred in May 2020 had already fallen by £110,175.25 as a result of the delay – which he thought was an "undisputed loss" which he should be compensated for.

But I think it would be sensible for me to try to explain what the calculation is trying to

demonstrate in an effort to show Mr O that, while he has indeed suffered delays over the transfer of his SIPP – for which he wasn't in any way responsible in my view – the ultimate outcome is that, based on the dates that were used for the calculation, he fortuitously benefitted financially from those delays. I recognise this might be difficult to accept, given the fairly obvious notion of the clear drop in the value of the fund from March to May 2020 – but I think the timing of the request, with the apparent volatility in the market because of a global pandemic that was evolving at that time, might at least offer some explanation for what happened to the funds here.

Mr O has said, on a number of occasions, that he is happy with his new funds and doesn't want them "mingled" with the previous funds and shouldn't be part of this complaint. But it's not clear to me what he means by this. Mr O had lost faith in the original Standard Life funds he held and that's why he wanted to transfer. By remaining in those funds for around three months longer than he anticipated and wanted I can understand why Mr O would be frustrated by that. And indeed, his frustration is at least superficially borne out by the fact that the value of his SIPP, invested into those funds, fell by over £100,000 in those three months.

But that's been taken into account within the calculation which provided an actual value of the fund, as of 8 July 2020, based on investment in those funds until May 2020 and then investment into the new funds thereafter. This was then compared with the position Mr O would be in now had investment been made into the new funds on 13 February 2020 – which is what Mr O wanted to happen.

Putting it as simply as I can, the replacement funds within the new platform wouldn't have been immune from the market losses which afflicted his existing funds, especially when 60% of the new investment portfolio was to be invested in equities. The only way by which Mr O could have entirely insulated his pension funds from the falls in financial markets would have been to switch into cash and remain in cash until the market had "bottomed". But this isn't what any party is saying should have happened here, and the evidence doesn't support the position that this was Mr O's intent.

So the transfer into the new platform should arguably have happened faster, but this would have largely switched him from one type of portfolio which would be affected by losses in financial markets at the time to another which would have experienced something similar. And this is a reasonable explanation as to why the comparison demonstrated that investment according to Mr O's request and at the earliest opportunity would have provided him with a smaller fund than that he ended up with following the delayed transfer. In essence, those replacement pension funds would also have been affected by the declines in financial markets and, by remaining in his existing pension funds for longer, that negative effect was somewhat mitigated.

But while I'm satisfied with the information that was input to carry out the calculations that have been provided, I don't consider now, having looked at all the evidence in more detail, that the dates that were used were consistent with what I think should have happened here."

Responses to my provisional decision

Mr O broadly accepted my provisional decision and the dates that I'd used for the revised calculation. But Magus didn't agree, making the following points in response:

- There was no reason to suggest Mr O's original instruction had been rescinded during the process, so ASC didn't need to ask Magus for reconfirmation of the sale

on 10 March 2020. So it didn't think it was reasonable to put any responsibility onto Magus for the delay in selling the assets to cash.

- It had no control over any delays that had been caused prior to 10 March 2020.
- It didn't provide any new information regarding the instruction to sell in its email on 23 March 2020 – it simply reaffirmed its previous position.
- It was unfortunate that the markets fell significantly while Mr O remained invested after 10 March 2020. The assets were sold when they had a low unit value and only started to recover when Mr O was already "in cash" – but Magus didn't deliberately delay the sale due to market conditions.
- It didn't accept my redress formula and felt that it was being held responsible for paying redress of the biggest potential loss, purely because of the timing of the downturn in the market.
- It was unaware of any redress I'd recommended in the other complaints, but felt that Standard Life ought to take overall responsibility for any losses because it didn't do what it was originally instructed to do and arrange to sell the assets to cash.
- I'd provisionally decided that the calculation of any potential loss needed to be brought up to the date of my final decision. But this would cause Magus a bigger potential loss than if the calculation was capped as at 7 July 2020 – which was the date that was originally used. It thought that, as it hadn't caused the delay in resolving the complaint, this was unreasonable.
- Financial gains that Mr O might make from any redress calculations elsewhere need to be offset against any losses arising from Magus' calculation.
- It proposed a solution whereby it and Standard Life could be held responsible for a percentage of any loss arising from a decision about the number of days delay each party had caused. It thought this proposal gave a fairer outcome.

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, and carefully considered Magus' further submissions and redress proposals, I see no reason to depart from my original findings but with the inclusion of the revised redress formula that I proposed in my recent email to all the parties involved.

The delays in encashing the saleable assets in the SIPP

In my provisional decision I said that I didn't think Magus was responsible for any delay in not selling the SIPP's assets from the date it first submitted Mr O's sale and transfer request, until the point ASC said the assets could be sold. I've dealt with that period of delay in the other decisions and, based on the further submissions I've been provided with, I haven't been persuaded to change my mind and I don't think it's fair to hold Magus responsible for that aspect of the overall delay.

But I have considered the events of 10 March 2020 when ASC was in discussion with Magus following Magus' direct approach to chase up the sales.

As set out in the provisional decision, I listened to the call recordings from that day and I'm satisfied that Magus, when asked to confirm if Mr O still wanted to proceed with the sale against the background of falling markets, told ASC to put the matter on hold. And this was confirmed in a subsequent email in which ASC said, "*Further to our telephone conversation earlier this morning, I have now received the instruction from the SIPP provider. Just to confirm, although we have received an instruction from the SIPP Provider to sell down the*

portfolios, we will not sell down these portfolios now, instead we will wait for your instruction owing to the recent difficult market conditions."

I think this indicated a clear instruction from Magus not to continue with the sale until it had revisited the position and updated ASC. And if it didn't accept ASC reaffirming the situation and (apparently) putting the responsibility onto Magus, then I would have expected Magus to have responded straight away stating what its position should have been.

Magus has said that its understanding of Mr O's intention had always remained the same as the original instruction to sell on 5 February 2020. It thought its complaint email of 23 March 2020, in which it said *"Magus should not be responsible for any loss from 11th March to today. Please take whatever action is needed to address this situation which has sadly created a totally unnecessary level of stress for my client"*, was confirmation of this.

But I can't ignore that Magus was Mr O's adviser and responsible for giving the instructions to proceed with the different parts of this transaction. I think it was clear that Magus told ASC to pause proceedings on 10 March 2020, and that it gave an instruction to continue with the sale on 23 March 2020, albeit that it wasn't a direct instruction but reference to its original position, *"Our position is clear. The instruction to sell was received and acknowledged by Standard Life on 13th February and that is our position."*

Magus hasn't subsequently provided any evidence to show that Mr O instructed it to delay the sale and I'm satisfied that the instruction not to carry on with the sale on 10 March 2020, as well intentioned as it may have been, was Magus'. So I think it's responsible for any potential losses that might have occurred had the sale continued on 10 March 2020 as put forward by ASC.

The redress calculation

In my provisional decision I said that a calculation to determine any losses had already been carried out both by Magus and also the new SIPP platform at my request. The calculation, which was based on selling assets within the SIPP and transferring the SIPP at the earliest date possible, showed that Mr O had in fact made a financial gain from the (delayed) process. I explained why this may have happened, in what was a rather unique investment background – coming as it did in the middle of significant volatility in the markets caused by a global pandemic.

But I wasn't satisfied that the dates that were used in the calculations best reflected what I thought should realistically have happened. So I said Magus should carry out a different calculation, based on different dates, to account for what I said was a 13 day delay caused by its instruction to pause the process on 10 March 2020. Magus doesn't accept the redress formula for the reasons I gave earlier, but I still believe the redress I proposed is the most appropriate way to put Mr O as close as possible to the position he would now be in.

I understand Magus' frustration that the period Mr O's complaint has been with this service will ultimately increase any compensation it has to pay Mr O by bringing the loss up to the date of the decision, rather than the July 2020 date that was originally used. But, while any delays in reaching a decision here were regrettable, there were many reasons for this, including the need to request further calculations and to make further investigations to establish what had happened.

And the outcome of our investigation is different, in terms of the redress calculation proposal, to that originally proposed by Magus. It's important for this service to fully complete an investigation to ensure we reach the right outcome in every case. In this complaint I'm

satisfied that any redress Mr O might receive will accurately reflect both the initial financial loss and the ongoing loss caused by the original problem.

Magus also proposed an “overall” solution to this issue whereby it and Standard Life compensate a proportionate amount of any loss according to the number of days delay each caused. It also believed this solution would mitigate the issue of it paying disproportionate compensation because the period of delay I’ve referred to covers the worst of any investment losses.

I’ve thought very carefully about these proposals and I understand why Magus has put them forward. It’s also suggested that any losses identified in its calculation should be offset by any gains within Standard Life’s calculation so that Mr O doesn’t benefit overall from financial gains.

And so, I asked the investigator to email both parties explaining that I have considered the alternatives here, and I accept the merit of Magus’ proposal for a proportionate resolution according to the number of days of delay each business is responsible for. But that would rely on both Magus and Standard Life working together after the decision is issued – with all the complications involved in determining the detail of a “joint” calculation. I think the practicalities of such a resolution would, in practice, make it almost impossible to enforce and would be more likely to leave Mr O with no common outcome or at best an outcome which doesn’t satisfactorily reflect the position he ought now to be in without the overall delays.

However, while I didn’t consider the proposal of the above calculation was workable, I nevertheless considered the proposal for any gain calculated by Standard Life to be offset against any loss calculated by Magus to be fair and reasonable.

This was on the condition that Magus would need to accept the calculation undertaken by Standard Life – otherwise, the same potential problems as with the apportionment proposal may well materialise. I also provided my proposed redress calculation to Standard Life for Magus to consider.

In response, Magus reiterated its view that it didn’t think it was responsible for any of the delays caused. But with regards to the proposed redress calculation specifically, it said it didn’t understand the calculation I had proposed that Standard Life should carry out – but in general it reiterated its position that any loss that might be established should be met by splitting the loss between 13 days responsibility to Magus and 12 to Standard life.

I know Magus expected a response to the other points it had made following the provisional decision when I asked for its comments on the proposed alteration to the redress. But I’ve covered those points within this decision – as I said I would and is our normal approach. But Magus hasn’t persuaded me to change my mind about the revised redress proposal – so I’ve set out below what I think should happen.

Putting things right

My aim is that Mr O should be put as closely as possible into the position he would probably now be in if he his SIPP assets had been sold earlier and the transfer then processed accordingly.

What must Magus do?

There is a total delay period in this matter of 25 days, from 27 February 2020 until the 23 March 2020 – the date on which Magus provided confirmation to ASC that Mr O's holdings should be sold. But Magus is only responsible for a proportion of this – from 10 March 2020 to 23 March 2020, the point at which it confirmed to ASC that it should proceed. This is a period of 13 days.

To compensate Mr O fairly, Magus should therefore calculate the notional value of Mr O's SIPP, as at the date of any final decision, had the holdings been sold 13 days before they were, and then reinvested 13 days before they actually were.

Magus should compare this notional value with the actual value of Mr O's SIPP at the same date of this final decision. From this amount should be deducted the value of any gain if applicable, at the date of this decision, as determined by the calculation undertaken by Standard Life.

If there is an overall loss, Magus should pay into Mr O's pension plan to increase its value by the total amount of the loss and any interest (as set out below). 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 Magus is unable to pay the total amount into Mr O'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 O won't be able to reclaim any of the reduction after compensation is paid.

The *notional* allowance should be calculated using Mr O's actual or expected marginal rate of tax at his selected retirement age. I assumed this to be basic rate in the provisional decision, and neither party has disputed this. And so the reduction should be applied to 75% of the compensation, resulting in an overall deduction of 15%.

Additional interest at the rate of 8% simple per year should be added to any loss from the date of this final decision to settlement if the complaint isn't settled within 28 days of Magus receiving notification of Mr O's acceptance.

Income tax may be payable on any interest paid. If Magus deducts income tax from the interest it should tell Mr O how much has been taken off. Magus should give Mr O a tax deduction certificate in respect of interest if Mr O 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 Magus Private Wealth Limited should pay the amount calculated as set out above.

Magus Private Wealth Limited should provide details of its calculation to Mr O in a clear, understandable format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 22 August 2022.

Keith Lawrence
Ombudsman

