

## **The complaint**

Mr M's complaint is that Halifax Share Dealing Limited didn't accept payment of a cheque for \$288 into his Halifax SIPP account. He feels he received incorrect and misleading information when trying to cash his cheque, and is unhappy that he has now lost out on \$288.

## **What happened**

In brief, Mr M had bought shares in an American financial services company through his SIPP. He signed up for a class action against that company, as there had been irregularities with regards to information published by it, and the shares had been overpriced. The cheque was effectively a refund of the overpayment. It was for \$288, and made out to Halifax Share Dealing SIPP FBO.

Mr M went into a Halifax branch to pay in the cheque in November 2020, but was told that he needed to send it to Halifax's Head Office. He did so with an accompanying letter. He didn't hear anything, so he chased Halifax by e-mail on a number of occasions. As he still didn't hear anything he went into the branch again to chase the matter. He received a response from Halifax dated 8 April 2021, saying it hadn't received the cheque. It also said that without receiving the cheque it wouldn't be able to deposit it on Mr M's behalf into his Halifax SIPP account.

As the cheque had passed its expiry date Mr M had to obtain a replacement cheque. This was for a lesser sum of \$256.47 due to administration costs. He went into his local branch again, but it was unable to help. Mr M complained, and Halifax responded on 21 May 2021.

Halifax said the only way Mr M could pay in the cheque was by contacting the administrator of the SIPP and completing a contribution form. It said it could only accept cheques in pounds sterling not dollars. And that Mr M could arrange for the cheque to be converted into pounds sterling by contacting the American financial services firm that had issued it. It said it didn't think it had breached its customer agreement with Mr M.

Mr M said the cheque wasn't payable to the SIPP administrator. And was again out of date by the time he was told to go to it.

I sent the firm my initial thoughts on the complaint on 16 September 2022. A copy was sent to Mr M. I said the cheque effectively represented money that had been paid out of the SIPP - a refund on the price paid for the shares. In its response to Mr M, Halifax had said as the income (the cheque) wasn't generated within the SIPP, Halifax had no control over how it was managed.

My view was that this wasn't income - it was money that was from within the SIPP, and technically wasn't a new contribution. Mr M was a customer of Halifax SDL. I said I accepted that the terms of the SIPP provided for a separation of duties between Halifax SDL providing the share dealing service, and the separate firm providing the administration services. But I said the SIPP was a joint venture between Halifax SDL and the administering firm. I said

this was quite an unusual situation. And that it wouldn't have been clear to Mr M who was responsible for what - in his mind he was a customer of Halifax SDL.

I said the SIPP's Terms provided, under Condition 2 "About Us" - "The service is provided by Halifax Share Dealing Limited."

I said "service" was in bold and defined as "the Halifax Share Dealing SIPP Service, including the provision **and administration** of the account for your SIPP..." My emphasis added.

So I didn't think Mr M ought to have known that he needed to approach the administering firm to pay in the cheque. I said I accepted that the terms may not exactly have covered the situation here. But I thought it would most closely fall into Corporate actions - Condition 12 of the terms. And 12.8 provided that where the client wished to participate in a corporate action and the nominee company received a distribution of entitlement to shares and any other benefits due to the SIPP arising from that corporate action, Halifax SDL would allocate the entitlement to the account for the SIPP.

Condition 12.13 effectively said that where a payment was received through a corporate action that wasn't in Pounds Sterling and it needed to be paid into the SIPP, Halifax SDL would make the appropriate currency conversion in accordance with Condition 9.2, and inform the client of the Pounds Sterling equivalent when it transferred that money to the SIPP. It said it might charge for that service.

I said I understood that Mr M had signed up for the corporate action himself, in the name of Halifax SDL, rather than through the Trustees. But I said there were a number of parties to the SIPP, and I didn't think Mr M acted unreasonably. I said irrespective of the terms, Mr M was clearly a customer of Halifax SDL. I thought it was reasonable for him to approach Halifax SDL to help with the cheque and, although he may initially have gone into a branch, he e-mailed the Halifax SIPP address on a number of occasions starting on 26 November 2020, but didn't receive a response. I thought Halifax, when paying due regard to Mr M's best interests, should have done more to help with the matter - even if that meant liaising with the SIPP administrator and Trustees directly itself to arrange for the cheque to be paid into the SIPP.

I said in the particular circumstances, I thought Mr M's complaint should succeed. And I thought Halifax should offer to pay in such amount as necessary to increase the value of Mr M's SIPP by whatever the appropriate currency conversion rate was in accordance with Condition 9.2, applied to the \$288 as at 26 November 2020. And that interest should then be added at the rate of 8% simple per annum from 26 November 2020 until the settlement date.

I didn't think Halifax SDL should make a charge as per condition 12.13, given the inconvenience caused to Mr M by the matter.

Halifax didn't agree to make the offer I'd suggested. It said, in summary, that an award which was received off the back of civil lawsuit in the USA for a UK taxpayer was considered taxable income. It said it didn't think that the class action was a corporate action as provided for in the SIPP's terms, and so they shouldn't be taken into consideration.

Halifax said the damages awarded to Mr M would likely be considered as taxable income. But as part of the benefit of a SIPP was that income was free of income tax, there was a contradiction. So It didn't think it was fair and reasonable to expect Halifax to overlook that the income from the damages was considered taxable. And that to credit Mr M's SIPP with the proceeds of the class action would put him into a false financial position.

## **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, I've seen no reason to depart from my initial view that the complaint should succeed.

As I said, I accept that the terms don't exactly cover the situation here. But I am bound to consider what's fair and reasonable in the circumstances. For the reasons I outlined above, I don't think Halifax acted in Mr M's best interests, and didn't provide a reasonable level of customer service. And I think it's reasonable to use the terms covering Corporate actions to decide on fair compensation given it's a fairly unique situation and I think they most closely resemble the circumstances.

The benefits when paid out of a SIPP are taxable as income (apart from that part of the pension payable as tax-free cash). The SIPP had originally bought the shares. And I think the money recovered was effectively money that should be returned to the SIPP. I said Halifax should pay in *such an amount* that it increased the SIPP's value by the amount calculated. This effectively takes into account the tax position, including that when the benefits are taken out of the SIPP they will be taxable as income (or 75% of it).

I've carefully considered what Halifax has said. But I'm satisfied what I've set out provides for fair compensation in the particular circumstances.

## **Putting things right**

Halifax Share Dealing Limited should pay such an amount as necessary into Mr M's SIPP to increase its value by whatever the appropriate currency conversion rate was in accordance with Condition 9.2, applied to the \$288, as at 26 November 2020. Interest should then be added at the rate of 8% simple per annum from 26 November 2020 until the settlement date.

Halifax Share Dealing Limited shouldn't make a charge as per condition 12.13, given the inconvenience caused to Mr M by the matter.

Halifax Share Dealing Limited shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance. If Halifax Share Dealing Limited is unable to pay the compensation into Mr M'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 M's actual marginal rate of tax. Mr M has said he is a higher rate taxpayer, so the reduction should equal the higher rate of tax. However, if Mr M would have been able to take a tax-free lump sum, the reduction should only be applied to 75% of the compensation.

## **My final decision**

My final decision is that I uphold Mr M's complaint.

I order Halifax Share Dealing Limited to pay compensation as I have outlined above under "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or

reject my decision before 17 November 2022.

David Ashley  
**Ombudsman**