

The complaint

Mr P complains that Curtis Banks Limited delayed his request to change the investment manager of the assets he held in his self-invested personal pension (SIPP). Mr P says he lost out on preferential returns with his new investment manager as a result.

What happened

Mr P held a SIPP with Curtis Banks. On 15 January 2020 Mr P instructed Curtis Banks to action a change of investment manager (COIM) from Brooks Macdonald to Brewin Dolphin. The instruction was to transfer Mr P's assets in-specie so the assets would move to Brewin Dolphin directly, without the need to be disinvested into cash.

The last of Mr P's assets were transferred to Brewin Dolphin on 14 May 2020. During the transfer Mr P complained to Curtis Banks about the length of time it was taking to complete.

Curtis Banks sent Mr P their final response to his complaint in July 2020. They agreed that the process had taken longer than it should. They said that after receiving Mr P's instructions to change investment manager on 15 January 2020 they contacted Brooks Macdonald to obtain a list of the assets Mr P held. It took them until 25 February 2020 to review the list and contact Brewin Dolphin to initiate the transfer. Curtis Banks accepted that they could have reviewed the list of assets sooner. And as a result, the transfer process could have been initiated earlier. Curtis Banks went on to say that the rest of the process was beyond their control as it was up to the other parties to arrange and complete the transfer of assets.

Curtis Banks offered to waive the £100 fee they'd normally charge for changing an investment manager. They also said they didn't know whether Brewin Dolphin made or intended to make changes to Mr P's assets. So, they couldn't say that their delay caused Mr P any investment losses. However, they offered to consider any commentary or evidence from Mr P that showed he'd suffered a loss due to the delay.

Mr P responded to Curtis Banks. He said that the transfer process had commenced on 11 March 2020, but as Curtis Banks had admitted causing six weeks of delays, it could have started on 29 January 2020. Mr P had asked both Brooks Macdonald and Brewin Dolphin to evidence the returns he would have received between 29 January and 11 March.

Mr P said Brooks Macdonald confirmed his portfolio returned -12.44% during that time. He also said Brewin Dolphin's risk category 3 (which was Mr P's investment strategy) had returned -9.15% during that time. So, he'd have mitigated his losses by 3.29% had he not been delayed. In monetary terms that meant he'd lost an additional £9,428.71 from his portfolio's value as a result of Curtis Banks delay.

Curtis Banks responded to Mr P's calculations. They disputed that Mr P's assets could have been transferred by 29 January 2020. Curtis Banks acknowledged that they caused a delay at the outset of the transfer request. And they could have reviewed the assets by 22 January 2020 rather than 25 February 2020. So, using the actual timescales of the remaining transfer process, the final assets would have been sent to Brewin Dolphin on 17 April 2020. Brewin Dolphin started to 'rebalance' Mr P's portfolio 17 working days after the final asset was

transferred. So notionally this rebalancing would have taken place on 13 May 2020 instead of 8 June 2020 as it did.

Mr P says he again approached Brooks Macdonald and Brewin Dolphin to establish the difference in returns between the two investment managers in the period between 13 May 2020 and 8 June 2020. He says Brewin Dolphins risk category 3 portfolios returned 5.3% over that period, and Brooks Macdonald returned 1.78%. So, he asked for the 3.52% performance difference to be paid to him.

In a further response, Curtis Banks agreed that compensation was due for the 27-day delay. However, they disputed that the growth should be applied to the whole of Mr P's portfolio, as after transferring, 56% of Mr P's portfolio remained invested the same as before. Only 44% was rebalanced. So, Curtis Banks did their own sums, including only applying the growth difference on a pro-rata basis for the 27 days.

Mr P disagreed with Curtis Banks calculations. He said the returns quoted were those of the period in question in absolute terms, and not an average return for the year. So, the interest shouldn't have been applied pro-rata over the 27 days. Curtis Banks maintained that their calculations were correct. So, Mr P decided to bring his complaint to our service.

Curtis Banks later said, on reflection they shouldn't have offered Mr P compensation for investment losses as he'd decided to transfer his funds in-specie. They said if it was Mr P's intention to sell his funds anyway to rebalance them he should have sold his assets to cash and transferred them that way, which was likely to be a quicker process.

They also said there was nothing stopping Mr P from selling assets at any point to mitigate his losses. And once the funds were transferred to Brewin Dolphin it took almost a month for the rebalancing to occur. So, they shouldn't be held accountable for that delay which might indicate that Mr P hadn't agreed an investment strategy with Brewin Dolphin until after the funds were transferred.

I sent Curtis Banks and Mr P a provisional decision in which I upheld the complaint and explained what I thought Curtis Banks should do to put things right. I've copied the findings from my provisional decision below.

My provisional decision

In my provisional decision I said;

It's not disputed that Curtis Banks caused a delay in changing Mr P's investment manager. So, my decision focuses on how long I think the delay was and whether that caused Mr P a financial loss that Curtis Banks needs to compensate him for.

How long should the transfer to Brewin Dolphin have taken?

Curtis Banks's timeline says the rebalancing of Mr P's portfolio was potentially delayed by 27 days. And could have happened on 13 May instead of 8 June when it did happen. But I don't think the dates being used are reasonable. I'll explain why.

Curtis Banks took 29 working days, between 15 January 2020 when it received Mr P's COIM instruction, to them sending the required instruction to Brewin Dolphin on 25 February 2020 to open an account. Curtis Banks, in their response letters, say this should have only taken five working days to process. So, a difference of 24 working days.

I'm satisfied that after that point, it was the responsibility of the two investment managers to

re-register and transfer the funds. So, I think the total delay Curtis Banks caused was 24 working days.

Did the delay lead to a financial loss for Mr P?

Curtis Banks say that Mr P didn't suffer a financial loss as he transferred his holdings 'in specie' meaning they weren't disinvested for any time. They say it took almost a month to 'rebalance' his portfolio after the transfer which they say demonstrates there was no plan in place before the transfer occurred. But I disagree, I'll explain why.

Three of Mr P's holdings were sold by Brewin Dolphin on 14 and 15 May 2020, almost immediately after the transfer had completed. So, I asked Brewin Dolphin why the rest of the rebalancing hadn't occurred for another three weeks. Brewin Dolphin say there wasn't a 'delay' in carrying out the rebalancing. They said there were substantial amounts of cash continuing to be received for months after the holdings were transferred and the rebalancing was on going as opposed to being a one off exercise.

Brewin Dolphin have confirmed that it's likely the rebalancing would have occurred earlier if the funds had been transferred earlier and that the rebalancing aimed to put Mr P's portfolio in a position that mirrored their Risk Category 3 benchmark (within acceptable tolerances). Which explains why only around 44% of Mr P's funds were altered.

Brewin Dolphin explained that; 'The Investment manager would have reviewed the balance of assets that were transferred, considered account performance to date, current market conditions, the clients risk category and investment objectives. Trading is only carried out where it is necessary to align the portfolio to the related benchmark, the process of rebalancing can be carried out over a period of months depending on a number of factors.'

Considering all of the evidence in this case, I'm satisfied that had Mr P's funds been transferred to the management of Brewin Dolphin earlier, he would have made similar, if not the same, changes to his portfolio 24 days earlier than he did. And I'm satisfied that Curtis Banks were responsible for this 24-day delay.

The responses to my provisional decision

Both Curtis Banks and Mr P accepted my provisional decision and provided no further evidence for me to consider.

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've also considered again my provisional decision.

I was pleased to see that both sides accepted my provisional decision. That means I see no reason to depart from the findings I've already reached in this case. So, my decision remains the same.

Putting things right

A fair and reasonable outcome would be for Curtis Banks to put Mr P, as far as possible, into the position he would now be in but for their delay. This is made more difficult when market conditions could have altered the investments that Mr P ultimately made. So, I don't think this is a complaint where there is a perfect solution for putting Mr P into the position he

would have been in but for Curtis Banks' delays.

While Brewin Dolphin say the rebalancing wasn't a one-off exercise, I can see that there were large changes made to Mr P's portfolio on 8 June 2020 which Curtis Banks have referred to as the rebalancing throughout this complaint. Following the rebalancing of Mr P's portfolio on 8 June 2020, Brewin Dolphin say it mirrored that of their Risk Category 3 Benchmark. But as I've said, I think Mr P could have performed this rebalancing 24 working days earlier. So, this rebalancing could have occurred on 1 May 2020 instead.

I consider the fairest outcome to put Mr P broadly in line with where his funds should be for Curtis Banks to compare the returns Mr P's actual portfolio saw between 1 May 2020 and 8 June 2020 with the performance of Brewin Dolphin's Risk Category 3 benchmark (which they've confirmed they can supply) over the same period. This will demonstrate whether Mr P suffered a loss between 1 May 2020 and 8 June 2020 (the 24 working day delay caused by Curtis Banks).

If this demonstrates a loss, Curtis Banks should find the evidenced average return for Mr P's portfolio between 8 June 2020 and the date on which Curtis Banks is notified of Mr P's acceptance of my final decision, and then increase its loss calculation accordingly.

Curtis bank should add 8% simple interest per year from the date on which they are notified of Mr P's acceptance of my final decision to the date of settlement if the complaint is not settled within 60 days of the date on which they are notified of Mr P's acceptance of my final decision.

Where compensation is due, Curtis Banks should pay into Mr P's current pension plan, to increase its value by the amount of the compensation and any interest. Its payment should allow for the effect of charges and any available tax relief. It shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.

If Curtis Banks isn't able to pay the compensation into Mr P's pension plan, it should pay the amount direct to him. But had it been possible to pay into the plan, it would've provided a taxable income. Therefore the compensation 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 P won't be able to reclaim any of the reduction after compensation is paid.

The notional allowance should be calculated using Mr P's actual or expected marginal rate of tax at his selected retirement age. It's reasonable to assume that he's likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if he'd 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%.

Curtis Banks should provide the details of the calculations to Mr P in a clear, simple format.

When I'm considering a complaint like Mr P's I think about whether it's fair to award compensation for distress and inconvenience. This isn't intended to fine or punish a business – which is the job of the regulator. But when something's gone wrong, recognition of the emotional and practical impact can make a real difference.

We're all inconvenienced at times in our day-to-day lives – and in our dealings with other people, businesses and organisations. When thinking about compensation, I need to decide that the impact of Curtis Banks' actions was greater than just a minor inconvenience or upset. It's clear to me that this was the case here.

In this case Curtis Banks asked Mr P for evidence of his losses, which he did, but later disputed they'd caused any loss at all. I think that added to the upset caused and inconvenience Mr P faced in trying to resolve the complaint. I've also considered that Curtis Banks has already waived the £100 fee it normally charges for the COIM. But in recognition of the upset and inconvenience caused Curtis Banks should additionally pay Mr P £100.

My final decision

My final decision is that I uphold this complaint and direct Curtis Banks Limited to compensate Mr P as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 28 December 2022.

Timothy Wilkes
Ombudsman