

## The complaint

Mr B complains that Atomos Investments Limited (formerly Sanlam Private Wealth) delayed in taking over the management of his investments. Mr B thinks he's been financially disadvantaged as a result of the delays.

Mr B's initial contact was with a different firm, but matters were taken over by Sanlam Private Wealth. The business responsible for this complaint is now known as Atomos Investments Limited, so I'll refer to Atomos throughout this decision.

## What happened

Mr B had investments held within a self-invested personal pension (SIPP) and an ISA and had been receiving advice about them from another financial adviser. The investments were held within a managed portfolio on an investment platform with a company I'll refer to as A.

Mr B met with Atomos in July 2019 to discuss whether it could take over the management of his investments. Based on Mr B's circumstances and objectives, Atomos recommended that his funds were invested in its discretionary personal investment portfolio service. Atomos explained to Mr B that it would provide 'restricted advice' – meaning it would assess his needs in respect of investment management and investment services only. And its services would primarily focus on investment products that it had carefully researched and approved. Its discretionary service meant that Atomos would make investment decisions that it felt were appropriate for Mr B, taking account of his investment aims and objectives. Mr B agreed for Atomos to take over the management of his investments.

Around August 2019, apparently at Atomos' suggestion, Mr B got in touch with A, the platform provider, to request that Atomos be given full servicing and management rights to his investments. Within a month or so Mr B's existing financial adviser had apparently 'unbundled' his assets and was no longer involved in the management of them.

In an email dated 18 October 2019, Atomos said "*we are now fully able to commence active management of your SIPP and ISAs*". It suggested meeting Mr B in late October or early November to discuss his aims and objectives going forward "*to formulate a pathway as to how best to optimise*" his returns.

The following month Atomos told Mr B that it was intending to review his investments and 'onboarding' following which it would summarise its discussion. In a further email sent shortly after, Atomos said it would look at the portfolio mix and "*report back*".

However, Mr B says that despite giving Atomos more information from about November 2019 onwards, nothing really happened. Mr B got in touch with Atomos in December 2019 asking for a progress report and what he should do about paying into his ISA and pension. Having heard nothing in response, Mr B contacted Atomos again in January 2020 asking if there was a problem.

Atomos said that it was seeking internal confirmation about how Mr B's pension could be set up. Later in January 2020, it said looking after Mr B's ISA didn't pose any difficulty at all.

However, it later said things concerning the pension had “*become even more complicated*”. As the assets were still held with a third party, it said it would have to ‘redo’ the application and open an account with an Atomos application in order to move the pension portfolio.

Whilst possible, Atomos thought it was difficult to do it within the fee structure previously agreed. It apologised and said that it thought it would be able to look after both accounts, but the pension fell within a regulation that wasn’t expected, which led to added complications. It explained that whilst it was rearranging its agreements to allow this type of account, realistically, it would be better if Mr B:

- limited Atomos’ oversight to the ISA. Atomos acknowledged that this wasn’t what Mr B wanted, but it felt it could be done at the quoted fee level and with no IFA involvement.
- revisit the situation in the new tax year – giving Mr B the chance to make further contributions in the way he’d done before.

Atomos thought this allowed things not “*to drift any longer*”.

Mr B said his priority was paying in that year’s ISA and pension contributions. But he’d established that the original fund wrapper was no longer in place and funds were now held in individual shares. So, he wouldn’t have a single fund to buy, but could instead make contributions to a cash account. Mr B said “*It’s the fact that the funds are rudderless that is now bothering me*”. He asked Atomos what it could do for the pension and ISA at that point, or what advice it could give him until it was sure what to do.

Atomos said that as soon as it had the wording for the new agreement, it could look after both investments. It said the ISA would be directly under its control and the pension would initially stay where it was, but it would have the authority to make changes to the portfolio and would have the holdings loaded on its system. It said it could provide quarterly valuations/reviews and would be the main point of contact for both. In the meantime, that meant Mr B’s funds would be under dual administration and Atomos’ management. In the short term, Atomos said that if Mr B had received a valuation on both funds, it could decide how that year’s contribution could be invested rather than it being uninvested in cash. It also said it could talk through options with Mr B. Mr B thought that sounded sensible and confirmed the total portfolio value and that it was currently arranged in three “*buckets*”.

Atomos confirmed that it shouldn’t be difficult to find holdings that suited Mr B. It then suggested some investment options to enable him to make the planned contributions and have his funds invested. It said it would be in touch once it had a new agreement to cover Mr B’s pension.

Mr B then got in touch with Atomos in February 2020 to make a “*plea*” for it to do something and said he’d put his additional contributions in cash in the meantime. But he wondered how exposed his investments generally would be. He added that he initially experienced some difficulty in making the contribution, as A wouldn’t initially accept a request that hadn’t come from his adviser.

Having heard nothing from about February 2020 onwards, Mr B got in touch with Atomos around July 2020. He’s since explained that his contact in February 2020 was in the hope that Atomos would take some preventative action before the impending financial crisis as a result of the global pandemic. But when he didn’t get an answer before the markets were hit, he knew the damage had been done. Mr B continued to chase things up throughout August 2020 saying he felt completely in the dark about what was happening. He asked for his concerns to be escalated.

Atomos contacted Mr B in September 2020 and apologised for the confusion over the previous 12 months. It said that it was in a position to take over the management of

his investments, but Mr B first had to complete another fact find, risk profile and client agreement. Atomos has been responsible for managing Mr B's investments since late 2020.

Mr B complained to Atomos. In its response sent in October 2020, amongst other things, Atomos mentioned some of the difficulties it had from January 2020 onwards and said the transfer didn't happen sooner as one of the account managers retired and another left the company. It apologised that Mr B hadn't been told about this. It said once it became aware of Mr B's concerns, another manager asked him to complete the necessary forms and his investments were transferred to Atomos to manage. Atomos thought Mr B's complaint should be partially upheld, as he hadn't received any updates since February 2020.

However, it said it wasn't possible to make a direct comparison of what his funds would have been worth as it couldn't be sure what fund values would be involved and the dates the transfers would have been made. And, in any event, Atomos didn't think Mr B had been financially disadvantaged because his funds continued to be invested. However, it offered £250 compensation for the distress and inconvenience Mr B had suffered.

Statements that Atomos has provided show the following:

ISA – funds were received between 1 and 14 December 2020 and units purchased from about 15 December 2020.

Pension investment account – funds were received on 27 November 2020 and units purchased from about 30 November 2020 onwards.

Mr B wrote to Atomos following its complaint response. He accepted that it hadn't charged him fees during the period of delay. However, he said *"the removal of the fund management 6 months before and during a financial crisis is of far greater concern to me than the already- agreed and signed fees incurred"*. He asked Atomos to work out the loss his investments had likely suffered due to its delays.

Mr B wasn't happy with Atomos' handling of things, so he complained to our Service.

One of our investigators looked into the complaint and concluded that Atomos hadn't acted fairly. She noted it was only able to take over things from September 2020 onwards and felt Atomos should have taken earlier action to try to address the problems it came up against. She said Atomos should compensate Mr B for any financial loss suffered (if applicable) by comparing the values of the funds once unmanaged, versus what they might have been worth if they'd stayed invested in the previous portfolio. She also recommended, if not already paid, that Atomos pay the £250 compensation it had previously mentioned.

Mr B accepted the investigator's assessment but felt that Atomos should be *"noticeably penalised"* as he felt it had been *"deliberately obstructive"* throughout. Mr B said Atomos had already told him it could have completed the transfer around September 2019 - as it did over a year later - but its failure to do so was because the request wasn't referred to those qualified to make the transfer.

Atomos didn't agree with the investigator because it said it had difficulty accepting Mr B's pension under its management. In any event, it again said it wasn't possible to make a comparison between fund values, as it couldn't be sure when the transfer would have been made. It remained of the view that Mr B hadn't been financially disadvantaged.

It asked for an Ombudsman to consider the matter afresh, so it's been passed to me to decide.

### **My provisional decision**

I sent Mr B and Atomos my provisional decision on 9 December 2022. I've included the relevant extracts below:

*"I think it's worth saying at the outset that, my role here isn't to "penalise" Atomos in the way that Mr B might hope in respect of anything that's gone wrong. Rather, if I decide that Atomos hasn't acted fairly or reasonably, it's for me to say what it needs to do to put things right.*

*Having now considered all of the evidence in this matter, I'm intending to reach broadly the same outcome that our investigator reached, but I've given slightly different reasons. So, I'm giving the parties an opportunity to comment first.*

*Atomos does appear to accept that it caused delays from about February 2020 onwards when the account managers who'd expected to look after Mr B's investments left the company. But it seems to be suggesting that it wasn't responsible for any delays before then as it had difficulties accepting Mr B's pension under its management. And its position is that the impact of any delays that did occur was mostly felt in the lack of updates that Mr B received. It doesn't accept that it was responsible for any financial loss that Mr B might have suffered, not least because his funds remained invested during the period they weren't being managed.*

*On the other hand, Mr B feels he's been financially disadvantaged as a result of Atomos' delays – especially as, according to Mr B, Atomos indicated it could have done things much sooner, but hadn't referred the matter to the right employee within the business.*

*I thought very carefully about both positions. But, for the reasons I've given below, I wasn't persuaded by Atomos' position.*

*In particular, Atomos' argued that it wasn't responsible for a delay from October 2019 as it had difficulty accepting Mr B's pension onto its system. Whilst I accept the evidence does suggest that Atomos had difficulties moving the pension over to its system, I don't agree that means it's not responsible for the delay.*

*I say that because Mr B first approached Atomos in July 2019. And from its initial fact find with him, it's reasonable to assume that Atomos knew enough about his current investments and how they were structured so as to be able to recommend its discretionary investment portfolio service in the first place. In other words, if Atomos had anticipated any problems, it's reasonable to assume it would have flagged them at this early stage – especially before giving Mr B any undertakings that it would take over things. From the evidence I've seen, it looks like Atomos did tell Mr B that it would get him to fill in the ISA form whilst it carried out exploratory work on his pension and before it had made any move about transferring his assets.*

*But from about August 2019, it appeared to be pretty much 'all systems go'. Mr B asked A to arrange for Atomos to have full servicing rights to his investments. And his former financial adviser had apparently 'unbundled' the investments within a month or so of Mr B's meeting with Atomos and had relinquished any management of them. As far as I can tell, that meant the investments were held separately outside of the fund/wrapper they were previously held in. In October 2019, Atomos told Mr B "we are now fully able to commence active management of your SIPP and ISAs".*

*So, by October 2019, I think Mr B had a reasonable expectation that Atomos would soon be taking over the management of his investments. Yet, things were far from straightforward. And I'm not persuaded that's a responsibility Mr B should bear. Especially when he appeared to hit something of a 'brick wall' around November 2019 when trying to find out what was happening with his investments. Mr B was clearly still hoping to make contributions to his pension and ISA around that time, so I can understand why it was important, for that reason amongst others, for him to know what was going on.*

*Yet, the evidence suggests Mr B had to chase things up, at which point he found out, around January 2020, that there was a problem concerning Atomos managing his pension*

*investment. And whilst I accept that Atomos did pose alternatives to Mr B as a means of trying to move things on – including managing his ISA only in the short-term – I think that's likely to have come as a significant disappointment to Mr B. Although, as Mr B's since explained, it was of greater concern to him to find out that his investments were "rudderless" particularly during a time of financial crisis, especially when the evidence shows that Mr B made reasonable efforts to reduce the length of any delays.*

*Allowing for a few weeks from October 2019 for Atomos to meet with Mr B to discuss proposed investments, I think it would have been in a position to take over things from around November 2019. But the evidence shows that, once Atomos took over things, the funds were reinvested in late November 2020 for the pension investment account and between early and mid-December for the ISA account. And it follows that I think it's responsible for the delays that occurred.*

*So, that leads me onto what Atomos should now do to put things right.*

### **Putting things right**

*Atomos said it couldn't consider whether Mr B had suffered a financial loss because it couldn't say, had all things been equal, which funds Mr B would have invested in and how long it would have taken for things to be transferred over. I have some sympathy with that view to the extent that it's difficult to say now exactly what would have happened if things had gone more smoothly. However, I think the reality of Mr B's situation is that the lack of oversight created a loss of opportunity to potentially invest in a different way. And, whilst noting Atomos' disagreement, I'm persuaded by Mr B's assertion that his investments were effectively 'rudderless', including during a time when there was market volatility due to a global pandemic. And, that may have had an impact on fund values. I also don't think Atomos did enough to try to mitigate against the impact that had.*

*Mr B thinks the consequences of the lack of management can best be worked out by comparing the performance of the previous portfolio he was invested in versus the actual, unmanaged investments (he says that ideally there would also be a comparison between the Atomos portfolio and the unmanaged investments).*

*In situations like this, I have to reach what I believe is a fair and reasonable outcome in the specific circumstances of the case.*

*In Mr B's case, I've thought about his motivation for approaching Atomos in the first place. There's no evidence to suggest that he wasn't happy with his investments per se. Rather, it looks like Mr B was intent on maximising his tax freedoms and, from what he's said, he mainly wanted to simplify the management of his investments. So, he's explained that's why he offered Atomos the job of managing his investments directly. I also have to think about what would have happened at the time had things turned out differently, as opposed to changes in market conditions that might now influence what Mr B thinks he would have done.*

*And on balance, I think that if Atomos had properly managed Mr B's expectations about whether it was in a position to take over his investments, he might have decided to leave things as they were until such time as it could. I say that in particular because Mr B has himself acknowledged that had he known there would be the delays he faced, he'd still likely have signed up to Atomos (presumably because of the simplification he said he was looking for) but wouldn't have transferred the IFA management of the funds held with A until there was a clear way forward. That being the case, I'm intending to say that a fair and reasonable outcome now is for Atomos to:*

- *ISA – establish what the value of Mr B's ISA would have been had it remained invested in his previous portfolio (LGT Vestra Adventurous and LGT Vestra Growth) between November 2019 and 14 December 2020 when the funds were transferred to Atomos and new units bought. If this*

*demonstrates a loss, Atomos will then need to apply to it the actual percentage returns Mr B has seen on his ISA from 14 December 2020 until the date of my final decision. This will then demonstrate the total loss suffered. Atomos should pay that into Mr B's ISA.*

- *Pension investment account - establish what the value of Mr B's pension investment account would have been had it remained invested in his previous managed portfolio (LGT Vestra Adventurous and LGT Vestra Growth) between November 2019 and 27 November 2020 when the funds were transferred to Atomos and units bought a few days later. If this demonstrates a loss, Atomos will then need to apply to it the actual percentage returns Mr B has seen on this investment account from 27 November 2020 until the date of my final decision. This will demonstrate the total loss Mr B suffered in respect of this specific investment. Atomos needs to pay that amount into Mr B's pension account. If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr B as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid. As Mr B would be able to take tax-free cash, 25% of the loss would be tax-free and 75% would have been taxed according to his likely income tax rate in retirement – presumed to be 20%. So, making a notional reduction of 15% overall from the loss adequately reflects this.*
- *This matter has clearly been a source of great concern to Mr B. Atomos offered £250 compensation for the inconvenience caused. In other circumstances, I might have said that wasn't enough to fully and fairly recognise the extent of Atomos' delays or the impact they had on Mr B. The upshot being that Mr B has faced a great deal of uncertainty surrounding his investments and pension provision. However, I understand that Atomos also decided to waive some fees that would otherwise have been charged during the period of delay. So, taking those things together, I'm satisfied that what Atomos has done recognises the impact of its delays. Therefore, I'm not intending to say it should pay additional compensation in respect of the impact of those delays. It should now pay Mr B the £250 compensation previously offered if it's not already done so".*

### **Responses to my provisional decision**

Mr B said my provisional decision *"describes the situation well"* and that he's broadly happy with the proposed outcome. However, he made the following additional comments:

- He questioned whether Atomos had explained the difficulties it reportedly had (as referenced in my provisional decision) between the period October 2019 to October 2020, given that Atomos (Sanlam at the time) apparently employed a specific individual to deal with pension transfers.
- Mr B didn't think compensation of £250 fairly reflected the effort needed in bringing the problem to a resolution. And whilst he recognised that Atomos hadn't charged him fees during the period of delay, he felt that was due to a lack of account management as opposed to a conscious effort on Atomos' part to waive fees. Mr B also felt that retrospectively applying fees for the period his investments were unmanaged would be *"bizarre"*.

Atomos asked for clarification about my proposed award. So, on 13 January 2023, I sent the following to Atomos and Mr B:

*"Step 1 of the calculation is to work out the notional value of what the respective parts of Mr B's investments would have been worth had they stayed invested in the LGT funds during the periods of delay. So:*

*ISA - between November 2019 (please calculate from 1<sup>st</sup>) and 14 December 2020.*

*Pension investment account – November 2019 (please calculate from 1<sup>st</sup>) and 27 November 2020.*

*That needs to be compared to the actual value of Mr B's funds on 14 December 2020 for the ISA and 27 November 2020 for the Pension investment account.*

*If the notional values on those dates are greater than the actual values, it demonstrates the losses Mr B suffered up until that point. But Mr B's losses would have also seen investment returns (or losses) since those dates had they been invested alongside his actual funds.*

*So, Step 2 of the calculation is to address the returns on any losses. In order to do that, Atomos then needs to apply the actual percentage returns that Mr B has seen on each of those accounts from the dates of the loss to the date of my final decision as that will factor in any additional investment loss that Mr B may have suffered.*

*Those two calculations together will demonstrate the total loss that Mr B may have suffered”.*

Atomos has since accepted my provisional 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.

As Atomos has accepted my provisional decision, I now need to consider whether anything Mr B has said would cause me to change what I said in that decision. And, on balance I don't think it does.

Atomos didn't elaborate on the difficulties it faced in accepting Mr B's pension into its management beyond what I've already set out in my provisional decision. My reference to it was simply to show that Atomos initially put that forward as a reason why it felt it wasn't responsible for any delays before about February 2020. But, whether it did or didn't have a dedicated officer to deal with pension transfers (although I have no reason to doubt what Mr B says) as I said in my provisional decision, I wasn't persuaded by Atomos' position. I remain of that view. So, I don't think it's necessary to go into any further detail on that point.

I appreciate that Mr B might feel his particular case warrants more compensation. But when deciding to award compensation, I need to think about the impact the business' mistakes or shortcomings have had on the consumer rather than simply focussing on the efforts they've had to make to bring the problem to a resolution. I can't say with any certainty whether Atomos' decision not to charge fees was a conscious one or was due to a lack of account management – or a combination of both. But, whatever the reason, the fact it didn't charge fees does, I think, go some way to recognising that Atomos was not overseeing things in the way that Mr B was entitled to expect. And by offering £250 compensation on top of that, I'm satisfied that Atomos recognised the impact of those shortcomings and delays on Mr B. So, when taking those two things together added to the fact that I'm making an award in terms of how Atomos should put right any financial loss that Mr B may have suffered, I'm satisfied that, overall, this is a fair and reasonable outcome to this specific complaint. Atomos should pay the £250 compensation to Mr B if it hasn't already done so.

### **My final decision**

I uphold this complaint. Atomos Investments Limited should put things right as I've set out above and as outlined in my provisional decision and email of 13 January 2023.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 17 February 2023.

Amanda Scott

**Ombudsman**