

The complaint

Mr M complains that Saxo Capital Markets UK Limited (Saxo) took too long to complete a pension transfer from one provider (who I'll refer to as provider A) to Saxo Capital and that investment positions went missing during a significant portion of the transfer process. Mr M says that this prevented him from making beneficial trades and has therefore resulted in investment losses.

Saxo acknowledged that the transfer took longer than expected. And offered Mr M a goodwill payment of £400 to settle the complaint. But Mr M doesn't consider this is enough.

Mr M has a second, separate complaint with Saxo. But my decision here only covers the complaint about the delayed September 2021 transfer.

What happened

I understand that Mr M had a SIPP with provider A. And that he wanted to transfer this to Saxo Capital.

Mr M said that he initiated the transfer with provider A in March 2021. But that the transfer only completed much later. So he complained to both provider A and to Saxo.

Saxo acknowledged that the transfer had taken longer than expected and that the service it had provided hadn't met its usual standards. But it said that the involvement of multiple parties had complicated communication. It also said that it had relied on other parties' involvement.

Saxo said that although Mr M felt that if the transfer hadn't been delayed he might've sold some securities at their highest market point and then reinvested that money, it couldn't be held liable for loss of potential profits, in line with its General Business Terms. It said it was an execution-only provider. But it offered Mr M £400 compensation as a goodwill gesture in settlement of his complaint.

Mr M told Saxo provider A had offered him £1,600 for his investment loss. And £300 for the stress and upset. He felt that it was also legally obliged to cover an investment loss. Mr M also said that he held Saxo more responsible for the delays than provider A.

Mr M said he would accept total compensation of £6,000 for his investment loss and for the distress and inconvenience he had gone through. Of this, he claimed £4,499.55 for investment loss.

Saxo didn't change its £400 offer, so Mr M brought his complaint to this service. He felt Saxo had caused an investment loss on a specific share. He said he had lost out both on the sale price and the investment opportunity he would've taken but for Saxo's delays. Mr M didn't think it was reasonable for Saxo not to provide him with compensation for his investment loss. He also felt that the £400 it had offered him was insulting.

Our investigator issued his first view in August 2022. He felt that the complaint should be

upheld. He considered that Saxo had caused a delay of 20 days to the transfer after reasonably cancelling it on 21 September 2021. He felt that Saxo was largely responsible for the delay in transferring specific investments from provider A to Saxo Capital.

Our investigator felt that the transfer should've been completed in ten working days of all the information being available to all involved parties. He felt this would've meant that the transfer should've been completed on 16 September 2021. He recommended that Saxo should compare the current position of Mr M's pension with what it would've been if the transfer had completed at that date. And restore his pension to what it would've been. He said this should be done in addition to the £400 compensation Saxo had already offered Mr M for the stress and upset it had caused him.

Mr M told our investigator that Saxo had updated its offer for stress and upset to £1,000. He said he hadn't accepted this as he felt he should get more. He said he didn't think that Saxo should pay less than what provider A had already paid.

Saxo didn't agree with our investigator. It made the following points:

- It accepted our investigator's conclusion that it had taken too long to reinstate the transfer after it had been cancelled on 1 September 2021. But it didn't agree that it should bear full responsibility for re-initiating the process. It said it had no response from provider A at the relevant time. And felt that provider A had unfairly blamed it for everything, while it should've taken some of the responsibility itself for the delay. It said that provider A could've reinitiated the transfer. It also said that when multiple parties were involved, communication inevitably becomes more complicated.
- It said that the assets in question were held with provider A at the time of the transfer. And that, as the recipient party it couldn't control or comment on what provider A allowed its clients to do or not do when a transfer request is in process. Because of this, it said it couldn't possibly have deprived Mr M of access to his assets during this period of time, because it never had them in the first place – provider A did.
- Saxo didn't agree with our investigator that the transfer should've completed in 10 working days. It felt that the 10 working days the investigator had used was an inappropriate point of comparison for the following reasons:
 - The guidance he'd reference was intended for insurance companies. But Saxo and provider A weren't insurance companies. Saxo said that the timelines for transfers in its industry differed significantly.
 - The guidance was only intended to apply to cash transfers. But this complaint was about a securities transfer, which was significantly more complex.
 - As well as the complexity of a transfer of securities, this case was further complicated by the fact that Mr M's securities were held in a pension wrapper (i.e. a SIPP), for example by requiring the involvement of yet another third-party corporate, being the pension trustee of the SIPP.
 - Saxo also said that the 10-day period referred to the inception of a transfer to completion, rather than being applicable to a situation where the transfer was cancelled and then reinitiated.

Saxo felt that the vast majority of the assets in Mr M's portfolio were transferred in an acceptable time period. It also referred this service to examples of industry standards for the securities investment pension transfer industry. These ranged from its own four to six weeks

to 10 to 12 weeks. It felt that this showed that the expected standard for its industry was 8 to 10 weeks.

Saxo also said that Mr M had asked to transfer 51 lines of stock. And that once the transfer had been reinitiated on the 21 September 2021 the following had happened:

- 16 lines had transferred on 21 September 2021
- 16 lines had transferred on 1 October 2021 (within 10 days)
- 15 lines had transferred on 6 December 2021 (within 11 weeks)
- 4 lines had transferred on 7 February 2022 (within 6 months)

Saxo accepted that the February 2022 transfer was far beyond the expected timescales. But said that it didn't feel it had sole responsibility for this. It also said that the final assets being transferred were relatively complex. Given this, Saxo said it was willing to standby the transfer timeframe stated on its website of 4 to 6 weeks. It asked our investigator to review his findings on that basis.

Saxo carried out a loss calculation which it felt put Mr M back in the position he would've been in had the transfer occurred within acceptable timeframes. The basis for its calculation was as follows:

- It only considered the 15 lines of assets transferred on 6 December 2021 and the 4 lines transferred on 7 February 2022 in its calculation, as all of the other transfers happened within four weeks of 1 September 2021.
- It had used 1 October 2021 as the baseline for when the December 2021 and February 2022 should've occurred.
- It had looked at the end-of-day price of the assets transferred in December 2021 and February 2022 and compared their value when they were actually transferred with their value when it felt they should've transferred (1 October 2021).
- Saxo also said it didn't agree with our investigator that "*the current position of Mr M's pension*" was the right point of comparison. It said that Mr M had full access to all of his assets from 7 February 2022. And that he didn't hold those assets with Saxo anymore. It said that was why it had used the period of 6 December 2021 and 7 February 2022 as the comparison point.

Saxo's loss calculation showed that Mr M would've been £1,675 better off if the December 2021 and February 2022 assets had been transferred to it by 1 October 2021. It said that if it deducted from this figure the amount of £1,900 provider A had already paid to Mr M, and then added in the £400 compensation our investigator had recommended, it led to a total figure of £175. But that it was willing to increase its offer up to the £400 our investigator had suggested.

Saxo also said that in order to try to achieve the type of redress our investigator had recommended, it had also estimated what an 'average trader' could've made from those assets had he traded during the period from 1 October 2021 to 7 February 2022. It said that its calculation produced a hypothetical gain over that period of £2,597. After deducting provider A's compensation of £1,900, and adding £400, this came to a final figure of £1,097.

Saxo said that it felt both of these calculations were fair and reasonable bases. It also said that although it had carried out these calculations, it didn't accept legal responsibility for any of these hypothetical losses. It said this position was fully supported by its General Terms of Business, which Mr M had signed when he'd opened his account. It said that Mr M had suffered no actual loss.

Our investigator shared Saxo's proposals with Mr M. He said that Saxo had said it felt the second approach was more in line with what his view was trying to achieve. But he wanted to know Mr M's views on the offer before he himself reached a conclusion on whether he agreed that either of the loss calculations were suitable.

Mr M felt Saxo had caused more investment loss than provider A. He said he would settle if the stress and upset compensation was increased to £2,000 and if in addition a £3,000 payment was made for investment loss.

Mr M asked to see how Saxo had calculated the investment loss. And said that provider A had provided an investment loss figure of £1,600. He said the investment loss calculation should be based on the average investment returns he'd achieved over the last two or three years. He also still felt he should get more compensation from Saxo for the stress and upset.

Our investigator issued his second view in September 2022. He still felt that Mr M's complaint should be upheld. He acknowledged that provider A could've potentially resolved the issue, but felt that Saxo could also have done so. And as he was specifically looking at Saxo's actions in relation to this complaint, he felt it followed that he would look primarily at where Saxo could've resolved the problem.

Our investigator felt his original recommendation for financial redress was still correct. But now felt that the revised offer for compensation for stress and upset Mr M said Saxo had offered - £1,000 – should be paid instead of the £400 he'd originally recommended. He also said that this £1,000 should be considered completely separate to the financial loss aspect of the complaint, and shouldn't be used as any part of the determination of the financial loss.

Mr M was still unhappy with the compensation recommended for stress and upset. He now wanted £3,000.

Saxo didn't agree with our investigator. It still felt its proposal was fair and reasonable. And that our investigator hadn't given due consideration to the appropriate transfer time period. It still didn't agree with the 10-working day transfer time he'd recommended should be used to work out when the transfer should've completed given it had applied to the wrong sort of transfer and the wrong industry.

However, in the interests of coming to an agreeable resolution, Saxo agreed to work through our investigator's suggested calculations regarding transfer time periods. Saxo said it would make one change to our investigator's recommended calculation. It said it hadn't used the "*current position of Mr M's pension*" for the reasons it had previously explained.

Saxo said that provider A had already paid Mr M £1,900 in respect of the transfer delay. It said to calculate the financial loss, it had estimated what the 'average trader' could've made from the transferring assets in the period of 16 September 2021 to 7 February 2022. It provided calculations which showed that this was £41,844.79.

Saxo said it had then taken the hypothetical starting point asset value on 16 September 2021, which was £41,840.53. This calculation therefore produced a hypothetical gain if Mr M had traded in line with market averages of £4.26. Saxo said that after the amount paid by provider A was deducted from this, a negative result would be produced.

Saxo said that Mr M hadn't fully explained to this service that the £1,000 it had offered for stress and upset was to settle both this complaint, and his other separate complaint. It said it had only ever offered £400 in respect of this complaint.

Overall, Saxo said its calculations of the redress our investigator had recommended, included the correct stress and upset compensation it had offered in respect of this complaint, totalled £404.26. But it said that as it would be willing to re-offer the amount it had suggested previously – that is a final total figure of £1,097, which included both the financial loss and the £400 compensation for stress and upset.

Mr M asked this service if it would be possible to get the £1,000 he said he'd been offered for stress and upset for both of his complaints with Saxo paid now, with investment loss being handled separately.

Our investigator considered Saxo's points but didn't change his view. He still felt that the transfer should be backdated to 16 September 2021. And that the financial loss calculations should therefore use 16 September 2021 as a start date. He also felt that the calculation should take into account the current notional account value.

Saxo didn't agree with our investigator. It said that Mr M only had restricted access to trade certain of his positions during the transfer. It said that the transfer completed on 7 February 2022. So all positions had been transferred from provider A to Saxo at this point. While it didn't know what had happened to those assets after they'd been transferred to provider A, it felt that they would've been open and tradeable from 7 February 2022. So it felt it wasn't responsible for what had happened to those assets after 7 February 2022.

Saxo also said there was no reasonable basis for holding Saxo responsible for trades Mr M had carried out after the transfer had been completed, or for the way the markets moved. It also said that our investigator hadn't been clear on what when he believed the responsibility for the loss ended.

Saxo also felt that it had already offered Mr M a more than reasonable amount of compensation for stress and upset, especially as it was prepared to stand by its offer of £1,097.

I asked Mr M to provide the letters provider A had sent him which covered the investment loss of £1,600 he said it had offered him, ideally showing the calculations. But he didn't reply.

I asked Saxo for a copy of Mr M's 23 November 2021 complaint, which it had addressed in its 18 January 2022. I also told Saxo that provider A had said in a letter dated 2 December 2021 to Mr M that Saxo had told it on 1 December 2021 that the transfer request had been cancelled, but that Saxo was going to immediately re-state it. I asked Saxo to provide a copy of that correspondence.

Saxo said that Mr M had emailed it to ask for an update on his complaint on 23 November 2021. But that it hadn't been able to find a complaint form or anything from Mr M asking to escalate a complaint. But it said it had sent Mr M a complaint acknowledgement email on the day Mr M had asked for an update and started investigating.

Saxo also said that it couldn't find an email from Saxo to provider A on 1 December 2021 which stated it had had cancelled the transfer. But it had found an email from Saxo to provider A on 3 January 2022 which stated that it had cancelled the transfer of a specific stock for administrative reasons.

As agreement couldn't be reached, the complaint came to me for a review.

I issued my provisional decision on 22 June 2022. It said:

I've considered all the evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I intend to uphold it. I agree with our investigator that financial compensation is required here. But I don't agree that the transfer should've completed by 16 September 2021 - I'm satisfied it should've completed by 1 October 2021. And I also don't agree with our investigator that Saxo should base its hypothetical loss calculation on the current position of Mr M's pension. Instead I'm persuaded that 7 February 2022 should be used, with interest then being applied to reimburse Mr M for the loss of use of that money. I'll explain the reasons for my decision.

Before I consider the settlement offer Saxo has made Mr M, I first considered the length of the delay Saxo caused.

When should the transfer have completed?

From what I've seen, Saxo started communicating with provider A about Mr M's transfer on 28 July 2021, after it had set up a pension account for him. The two parties then communicated regularly until 23 August 2021 to ensure all the instructions were in place in a way that all parties could accept and process. I don't consider that this was an unreasonable period of time to have taken given the complexity of the transfer.

Saxo cancelled the transfer on 1 September 2021 when it didn't receive information it needed from provider A. And the transfer had to start again.

Although I can see that it was reasonable for Saxo to have cancelled the transfer when it did, I don't consider that it should've taken until 21 September 2021 to start the transfer process again. I agree with our investigator that the process could've been resumed as early as 1 September 2021. Saxo also appear to have agreed that the transfer should've started here, as it has said the transfer should've then completed by 1 October 2021, using the lowest end of its published 4 to 6 week timeframe.

Therefore, although there were clearly also subsequent delays with the transfer, there's no value in attributing those to either provider A or to Saxo. Instead, I agree with Saxo that the transfer should've completed by 1 October 2021.

Is Saxo's settlement offer fair?

Where a business has made an offer to settle a complaint – as Saxo has done – what I have to decide is whether, in all the circumstances, that offer is fair and reasonable.

In this case, Saxo has acknowledged that it delayed Mr M's transfer. While it didn't agree that it was responsible - as an execution only provider - for the loss of any potential trading profits, it offered financial compensation based on the hypothetical gain that Mr M would've made between 16 September 2021 – as recommended by our investigator - and 7 February 2022. Saxo said this gain would've been £4.26.

Saxo's calculation of the £4.26 hypothetical loss differed from the calculation our investigator had recommended – it used an end date of 7 February 2022, rather than the present date. Although Saxo didn't agree that the transfer should've completed by 16 September, it based the calculation on this date, rather than the date it felt should be used - 1 October 2021.

As I noted above, I consider that the transfer should've completed by 1 October 2021. Saxo had previously used this date in an earlier hypothetical loss calculation. It said that an 'average trader' could've made a hypothetical gain of £2,597 during the period from 1 October 2021 to 7 February 2022. It then made a settlement offer of £1,097, which it calculated by deducting provider A's compensation of £1,900, and adding its stress and upset offer of £400.

I consider that this hypothetical loss calculation is broadly reasonable, except for two points. I say this because, from what I've seen, Saxo has fairly based its loss calculation on the correct assets, and for the correct period of time. But it has incorrectly deducted provider A's £300 compensation to Mr M in respect of stress and upset, as well as the £1,600 financial loss compensation it provided. And it hasn't allowed for any interest or investment return on the hypothetical gain between 7 February 2022 and the date of any final decision.

I'll explain why I consider Saxo's calculation is broadly correct. And what I feel it needs to do to make it right.

I don't agree with our investigator that the transfer should've completed in 10 working days. I say this because I agree with Saxo that the 10 working days guidance wasn't an appropriate point of comparison for a transfer of this type. I'm satisfied that it was reasonable for Saxo to allow four weeks for the transfer, which I agree was complex.

I say this because Saxo's stated timeframe for transfers on its website is four to six weeks. So I consider it is fair and reasonable to allow it to abide by its own stated timeframe.

I also don't agree with our investigator that the loss calculation should consider what the pension would've been now, but for the delays.

I say this because I agree with Saxo that Mr M had full access to all of his assets from 7 February 2022. Therefore it wouldn't be fair or reasonable to hold Saxo responsible for Mr M's investment choices after he had access to all of his assets from 7 February 2022. So I consider that Saxo reasonably used 7 February 2022 as the end point for its hypothetical loss calculations.

However, I consider that the hypothetical loss calculation should've also taken account of the lost investment return on the loss calculated, from 7 February 2022 to the date of any final decision. To put this right, I intend to ask Saxo to pay Mr M annual simple interest of 8% on its share of the hypothetical loss from 7 February 2022 to the date of any final decision.

I've suggested simple interest here, rather than any actual investment market returns, for simplicity.

I also consider that Saxo has inadvertently deducted the £300 provider A offered Mr M in respect of stress and upset from its hypothetical loss calculation. So it should add this back to the net £697 hypothetical loss it calculated, bringing that total up to £997.

I understand that Mr M holds Saxo more responsible for the transfer delays than provider A, and therefore expected a higher level of compensation from it than that he has already received from provider A. But I can only fairly ask Saxo to put Mr M back to the position he would've most likely been in but for the delays it caused. And I believe that the payment of £997, plus interest, will do this.

I finally considered whether Saxo's offer of compensation for the stress and upset it has caused Mr M is fair.

Distress and inconvenience

Saxo has offered Mr M £400 compensation for the stress and upset the transfer delays have caused him. I understand he received £300 from provider A.

From what I've seen, Mr M was inconvenienced by the delays to his transfer. And it has clearly caused him stress. However, I'm satisfied that the £400 Saxo has offered him is fair and reasonable under the circumstances.

In summary, I intend to uphold this complaint. I intend to ask Saxo to pay Mr M £997 for the hypothetical financial loss and £400 for the stress and upset. I also intend to ask Saxo to pay annual simple interest on the £997 at the rate of 8% between 7 February 2022 and the date of any final decision.

Response to my provisional decision

Saxo said that whilst there were elements of the decision that it didn't agree with, it would accept my decision in this case.

It said that it would be helpful, before the final decision, if I could agree the compensation figure, to ensure that it had properly understood my request.

It set out its calculation of this as follows:

"Hypothetical trading gain = £2,597

MINUS [provider A] compensation for financial loss only = £1,600

SUB-TOTAL = £997

PLUS 8% annual interest

= £997 x 8% = £79.76

To annualise for the time period in question:

- £79.76 / 12 = monthly interest = £6.64*
- 7 February 2022 to 6 July 2023 = 17 months = £6.64 x 17 = **£112.88***

*PLUS compensation for stress & upset [see p.8 of the decision] = **£400***

GRAND TOTAL = £1509.88"

Mr M said he didn't agree with my provisional decision. He still felt Saxo had offered him £1,000 compensation, which he felt I had reduced.

Mr M said he also disagreed with my transfer timeline views. But he didn't provide any other information.

Mr M also felt that Saxo should be penalised for its actions. He said that provider A had paid him £1,600 financial compensation, which was more than I was asking Saxo to pay him. But he felt that Saxo had been responsible for most of the issues.

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 can confirm that Saxo's calculation of a total redress of £1,509.88 is in line with my provisional decision.

I acknowledge that Mr M still considers that Saxo offered him £1,000 compensation for distress and inconvenience. But it has said that is not the case.

As I noted in my provisional decision, Saxo said that the £1,000 it had offered Mr M for stress and upset was to settle both this complaint, and his other separate complaint. It said it had only ever offered £400 in respect of this complaint. So I don't agree I have reduced the amount Saxo offered in my decision.

I acknowledge that Mr M feels strongly that Saxo is more responsible than provider A for what happened. But provider A has already provided a certain level of financial compensation, and I need to allow for that to ensure Mr M is put back, as close as possible, to the position he would otherwise be in if the delays hadn't occurred. I don't have the power to penalise Saxo. But I can ask it to take steps to ensure Mr M is put back, as close as possible, to where he should be now. I consider that the redress it has agreed to pay Mr M does that.

As no new information has come to light to change my opinion, I remain of the view I set out in my provisional decision.

Putting things right

I require Saxo Capital Markets UK Limited to pay Mr M:

- £997 for the hypothetical trading gain he would've made
- £112.88 in lost interest on that trading gain
- £400 for stress and upset

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

My final decision

For the reasons set out above, I uphold Mr M's complaint. I require Saxo Capital Markets UK Limited to take the actions listed in the "Putting things right" section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 25 July 2023.

Jo Occleshaw
Ombudsman