

The complaint

Mr O complains that Elevate Portfolio Services Limited (“Elevate”) failed to complete the transfer of his pension savings to another provider in a timely manner.

What happened

Mr O held pension savings with Elevate that he decided to transfer to another provider – I will call that firm “G”. G submitted a transfer request to Elevate using the automated Origo Options system. It was received by Elevate on 21 September 2021. Elevate sold Mr O’s pension investments and transferred the resulting proceeds to G on 4 October.

But Elevate failed to correctly update the Origo system with the progress of the transfer – it failed to update the system to show that Mr O’s funds had been sent. I can see that G placed an update request to Elevate on the Origo system the day after the transfer had been made. But Elevate says that it either failed to notice that request, or that it failed to act on it.

Around two weeks later, on 19 September, Mr O’s financial advisor got in touch with Elevate to query the status of the transfer. He was told that the payment had been made on 4 October. But Elevate still failed to correctly update the payment status meaning that G remained unable to apply the funds to Mr O’s new pension plan. The financial advisor contacted Elevate again on 21 October, asking for the payment status to be updated. And he called again the following day when no changes had been made. Following that call Elevate corrected the Origo record to show the funds had been sent.

Mr O complained to Elevate about the delay. He said that his pension savings had been held in cash, rather than invested, for an extended period of time due to Elevate’s failure to update the Origo transfer information. He asked that Elevate calculate whether he had lost out as a result of the delayed investment of his pension savings.

Elevate agreed that it had been at fault in not correctly updating the transfer information for around two weeks. But it didn’t agree that failure should have prevented G from allocating the inbound payment to Mr O’s pension plan, and investing his pension savings. So it didn’t think it was necessary to calculate whether Mr O had lost out – it said any losses were the responsibility of G. Unhappy with that response, Mr O brought his complaint to us.

Mr O’s complaint has been assessed by one of our investigators. He thought that Elevate was responsible for the delay to the investment of Mr O’s pension savings. So he asked Elevate to work out whether the delay had caused Mr O to lose out, and if appropriate to pay him some compensation.

Elevate didn’t agree with that assessment. So, as the complaint hasn’t been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process. If Mr O accepts my decision it is legally binding on both parties.

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.

In deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mr O and by Elevate. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

At the outset I think it is useful to reflect on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

There have been three regulated businesses involved in the transfer of Mr O's pension savings. Elevate originally held Mr O's pension plan before his monies were transferred to G. And Mr O was assisted in making the transfer by his financial advisor. But this complaint only relates to the actions of Elevate. It wouldn't be appropriate in this decision for me to find that other parties should pay Mr O compensation. But I have considered whether the actions of those parties might reasonably reduce, or entirely remove, any compensation that might be due to Mr O from Elevate.

Elevate accepts that it failed to correctly update the transfer status on the Origo system to show that the funds had been sent to G. But it says that shouldn't have prevented G from adding those funds to Mr O's pension plan, and so he should have been able to invest the transferred funds as soon as that had happened. But I don't agree.

I don't think it is reasonable for Elevate to dictate how the processes of another firm should be structured. G has said that it has very clear processes to ensure the safety and integrity of any client monies that it receives. It says that it uses the updated "funds sent" status on the Origo system to authorise the matching of incoming payments and their allocation to a consumer's pension plan. I don't think that is an unreasonable approach to take.

So, when Elevate failed to correctly update the payment status, G was unable to match the transferred funds that it received. I can see that, on the day after receipt of the funds, it contacted Elevate to ask that the payment status was updated, but no response was received. I accept that it might have been appropriate for G to make further requests of Elevate for action to be taken. But it does seem that it kept Mr O and his financial advisor updated, and allowed the financial advisor to chase Elevate on Mr O's behalf.

Elevate has said that it might have been more appropriate for G to return the transferred funds if it had been unable to match them. And I am sure that is ultimately what G would have done. But I cannot see that approach would reduce the potential investment loss that Mr O now faces. His pension savings would still have been uninvested. But, instead of sitting unmatched with G, they'd just be within the banking system being returned to Elevate.

I think that, ultimately, the responsibility for any loss that Mr O has suffered through the delayed investment of his pension savings, falls to Elevate. It initially failed to correctly update the transfer information. It failed to act on a reminder from G for the update to be made. And it wasn't until after a second request from Mr O's financial advisor, that matters were corrected.

So I think that Mr O's complaint should be upheld. Elevate now needs to establish whether the delayed investment of Mr O's pension savings has caused him to lose out, and if so to pay him appropriate compensation as set out below.

Putting things right

Mr O's pension savings were invested by G two working days after it received confirmation of the transfer. I think it is reasonable to conclude that similar investment timescales would have applied if nothing had gone wrong. So Mr O's pension savings should have been invested two working days after G should have received confirmation the funds had been sent – the investment should have taken place on 6 October 2021.

So, to put things right, Elevate should;

- Establish, with the assistance of G, the investments Mr O could have made, had the funds been available for investment on 6 October 2021. Elevate should assume that the funds would have been invested at that time in identical proportions to the investments Mr O made when the transfer status was finally updated.
- Calculate what those investments would have been notionally worth at the time Mr O's pension savings were actually invested. If the notional value is greater than the transferred value, Mr O has suffered a loss and should be paid the difference,
- Any difference that is to be paid as compensation should be increased (or reduced) to reflect the overall gains (or losses) experienced across Mr O's pension savings with G between the date the transfer actually completed and the date of this final decision.
- Elevate should pay into Mr O's pension plan to increase its value by the total amount of the compensation plus investment returns. 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 Elevate 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 expected marginal rate of tax at his selected retirement age. I think it's reasonable to assume that Mr O is likely to be a higher rate taxpayer at the selected retirement age, so the reduction would equal 40%. However, as Mr O would 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 30%.

My final decision

My final decision is that I uphold Mr O's complaint and direct Elevate Portfolio Services Limited to put things right as detailed above.

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

reject my decision before 16 August 2023.

Paul Reilly
Ombudsman