

## **The complaint**

Dr S complains that Wesleyan Assurance Society trading as Wesleyan incorrectly processed a withdrawal request from their ISA, when it should have been from their investment bond.

## **What happened**

On 2 December 2019 Dr S sent Wesleyan an instruction to withdraw £6,000 from their investment bond. On 3 December 2019 this was processed and 2,468.731 units in the bond were encashed at a value of £1.757 per unit, totalling £4,337.56. As it is a with-profit fund, a final bonus was added to this, of £1,662.44. However, on 2 December 2019, Wesleyan had already incorrectly processed a withdrawal of £6,000 from Dr S' stocks and shares ISA. They encashed 4,076.211 units at a price of £1.356 per unit, totalling £5,527.34 and added a final bonus of £472.66. Only one amount of £6,000 was paid to Dr S.

In January 2020 Dr S wrote to Wesleyan to point out the problem and Wesleyan replied on 20 January 2020 to apologise and promised to rectify the issue. In April 2020 Wesleyan issued Dr S with their annual statements for all accounts but didn't include the investment bond in the statements. In May 2020 Dr S emailed Wesleyan again to chase up their work on the rectification and was told that the Covid-19 pandemic had impacted Wesleyan's response times.

In 2022 Dr S had a review with a Wesleyan adviser and was told that the withdrawal was still showing as having been made on both the bond and ISA, so raised a complaint. Wesleyan offered £250 for the distress and inconvenience caused, confirmed the bond was showing the correct value (as the withdrawal was correctly showing as being taken from that investment), and that they were working on correcting the ISA and would confirm when it was complete. By January 2023 Dr S hadn't received confirmation, so brought the complaint to our service.

An investigator at our service looked into the complaint and, following Wesleyan not replying to information requests, found the complaint should be upheld. He said Wesleyan should pay a total of £300 compensation, and ensure the ISA is put in the position it would now be in if the withdrawal hadn't occurred, and provide the missing bond statement from 2020. In reply, Wesleyan confirmed the ISA had been rectified, though didn't provide any proof of this.

Dr S didn't accept the investigator's opinion, due to the lack of evidence that the ISA had been corrected and because Wesleyan hadn't explained how the error occurred, or where the money from the ISA was paid to. So, they asked for an ombudsman to look into the complaint and it was passed to me. I wrote to Wesleyan, asking for proof that the ISA had been rectified and Wesleyan confirmed that the work hadn't yet been completed. They told us that it had been requested urgently and explained that the 2020 statement wasn't issued because of the manual adjustments being made.

I issued a provisional decision, in which I said:

*“There’s no dispute that Wesleyan are at fault for the way the withdrawal was processed and for misappropriating the funds – they ought to have only withdrawn the amount from the bond, not the ISA. So, the focus of my decision is on how Wesleyan should put this right.*

*Wesleyan hasn’t explained why this issue happened, nor where the money was paid to, despite being asked by both Dr S and our service. Our service is not able to audit a firm’s systems – we are reliant on answers being provided to questions we ask. Sometimes, if a firm refuses to reply or ignores a request for information, unfortunately this means that we can’t always give the answers to a complainant. Here I’m afraid this means that I can’t answer the questions of why the amount was deducted, or where it was paid to. My aim instead is to put Dr S’ ISA back in the position it would be in now, but for the error made by Wesleyan.*

*I’m satisfied that the ISA hasn’t yet been reconstructed, so Wesleyan should reconstruct the ISA as though no units had been sold by adding 4,076.211 units to the ISA. Wesleyan will need to amend their records to show that no corresponding final bonus has been paid out. They will also need to calculate what the subsequent annual bonuses since 2 December 2019 would have been and apply an uplift in the number of units in the ISA, to make up for not receiving those at the relevant times.*

*I can see from the statements that Dr S has paid advice and administrative fees to Wesleyan since 2 December 2019 for the ISA. I don’t think it’s fair that Dr S should have to pay for the cost of this ISA when Wesleyan haven’t been able to administer it properly for more than four years. I see no reason why Wesleyan didn’t reconstruct the ISA within days of the withdrawal, let alone after this amount of time. This is an extremely poor level of administrative service that has been provided.*

*As a result, Wesleyan should refund all fees and charges in relation to their administration and advice regarding the ISA. As they are deducted from the fund, then rather than making this refund in cash, the ISA should be reconstructed in the same way as above – including calculating how much the annual bonuses would have been, had the charges not been deducted.*

*Once the reconstruction is complete, Wesleyan should reissue all ISA statements for the ISA since 2 December 2019 showing what the correct position should have been at the relevant times.*

*As it’s an ISA, Wesleyan should ensure that the reconstruction has no impact on Dr S’ ISA subscription allowance, as the money ought not to have been removed from the ISA in 2019. If this isn’t possible and Dr S’ subscription limit for this year will be impacted as a result of the reconstruction, I will need to see proof of contact from HMRC explaining why they won’t allow Wesleyan to properly make things right, by the deadline set out in this decision.*

*A 2020 statement for the investment bond needs to be issued. I should note that I don’t accept Wesleyan’s explanation for the lack of a statement being issued in 2020 for the bond. They’ve said it was because of the ongoing reconstruction. This explanation would be logical if the ISA statement hadn’t been issued, but a statement was issued for the ISA. Nothing in relation to the bond needed to be amended, so I don’t consider this to be a reasonable explanation and I’ve taken it into account when considering the amount of compensation. Turning to the distress and inconvenience caused here, I consider it to be considerable primarily due to the time that it has taken for Wesleyan to resolve this issue – it’s now been more than four years since the withdrawal. This is exacerbated by the following:*

- *Wesleyan have lied to both Dr S and our service, by saying the reconstruction was in hand in 2020 and 2022, and by telling us in August 2023 that it had been completed.*

- Wesleyan haven't answered why this happened and where the money went.
- They've misappropriated the funds from the ISA.
- Dr S has had to repeatedly chase Wesleyan to resolve the issue.
- Wesleyan ought to have issued the 2020 statement for the bond.
- Wesleyan repeatedly haven't adhered to deadlines set by our service and so have caused further delays to the resolution of this complaint.

*All of this will have naturally caused Dr S a great deal of concern, by not knowing where the money was, or when they'd get it back. For the above reasons, I'm satisfied that a payment of £1,000 (including the £250 already offered) for the distress and inconvenience caused, is fair and reasonable here. Wesleyan should ensure that all of the above is completed within 28 days of our service notifying them of the acceptance of my final decision."*

### **Replies to my provisional decision**

Dr S replied and accepted the decision. They asked that Wesleyan provided a breakdown of the calculations so they can understand whether the rectification has happened. They explained they're worried about what would happen if Wesleyan didn't comply with the decision – and that as the value can go up and down, that Wesleyan would take further money and simply say the value went down. Dr S said there shouldn't be an issue with HMRC as they don't fully use their ISA allowance.

Wesleyan didn't reply.

### **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 see no reason to depart from the provisional findings as set out above, and I make them final.

To address Dr S' concerns about Wesleyan complying with my decision – it is binding on Wesleyan, if accepted by Dr S. This means that if Wesleyan don't comply, it can be enforced via the courts. Hopefully that won't be necessary, and I will direct Wesleyan to complete the remediation necessary within a set time limit below.

Dr S is also concerned that Wesleyan will again remove money from one of her investments and perhaps blame market movement for the loss. For reassurance, it may help if I explain that Dr S will be able to oversee this by monitoring the number of units owned in each investment. If any are sold, this should be on Dr S' instruction, or for things covered in the terms of the account, for instance the payment of fees.

As Dr S doesn't use their ISA subscription allowance fully, this should avoid any problems with HMRC. I've set out below how Wesleyan should put things right.

### **Putting things right**

Wesleyan should:

- Reconstruct the ISA to ensure Dr S holds the correct number of units by:
  - reapplying the original units deducted and refunding the administration and advice fees they've taken since 2 December 2019.

- recalculating the annual bonuses that Dr S should have received since 2019 had the above been invested and applying a further uplift to the number of units as necessary.
- Ensuring the final bonus records of the amount Dr S has received is correct.
- Ensure Dr S' ISA subscription allowance is not impacted by the reconstruction.
- Once reconstructed, reissue the ISA statements for the period of December 2019 to the date of reconstruction.
- Issue the 2020 bond statement.
- Pay a total £1,000 for the distress and inconvenience caused.

Wesleyan should ensure that all of the above is completed within 28 days of our service notifying them of the acceptance of my final decision. If not settled within 28 days of Wesleyan receiving Dr S' acceptance, then 8% simple per year interest should be paid on the monetary award from the date of the final decision to settlement.

Wesleyan should provide Dr S with details of its calculations in a clear and simple format.

### **My final decision**

I uphold the complaint. My decision is that Wesleyan Assurance Society trading as Wesleyan should carry out the actions and pay the amount calculated as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Dr S to accept or reject my decision before 18 March 2024.

Katie Haywood  
**Ombudsman**