DRN-4810283

The complaint

Mrs F complains that Elevate Portfolio Services Limited (Elevate) unnecessarily delayed the transfer of her pension to a new provider. She thinks Elevate should have been more transparent in keeping her informed about an outstanding direct debit on the pension account and its impact on the transfer, and could have transferred the bulk of the funds sooner while holding back a small sum to cover any outstanding commitments.

What happened

Elevate received an instruction to transfer Mrs F's pension plan to a new provider on 13 October 2023. It conducted its initial checks and notified the new provider of its intention to sell the assets within the plan the next day. The funds were encashed soon after but as there was an outstanding direct debit due on the account that didn't clear until 23 October – and some charges were due to be taken the following day – the transfer wasn't progressed until 26 October. Mrs F was notified that the funds had been sent to the new provider on 30 October 2023.

Mrs F's partner had instructed a transfer the same day and his completed on 22 October 2023, so Mrs F complained that her transfer had been unnecessarily delayed and she'd suffered a financial loss. Elevate said that it had processed the transfer within the timeline it would have expected – allowing for the direct debit and charges to be taken – but accepted that it failed to manage Mrs F's expectations at the outset by not making her aware of the outstanding direct debit and paid £50 compensation for the inconvenience caused.

Mrs F said that it wasn't appropriate for Elevate to hold over £107,000 of her funds in cash awaiting the clearance of around £300 in fees and outstanding payments. She said Elevate could have completed the transfer holding back an equivalent sum to cover those commitments.

Mrs F brought her complaint to us where one of our investigators looked into the matter. He didn't think Elevate had caused any delay to the transfer which might have been responsible for the loss in value of the funds while they remained in cash. But he did think that Elevate should have made Mrs F – or her adviser – aware that the transfer couldn't be progressed until the outstanding direct debit had cleared. He thought that if it had done this Mrs F could have decided on what alternative action she might have taken. But he said he couldn't speculate on what Mrs F might have done and couldn't be sure how this would have affected the transfer value. So he thought Elevate should pay further compensation, to a total of £150, for the impact of its error in not making Mrs F aware of the potential delay in processing the transfer.
Elevate said it would pay the additional recommended compensation, but Mrs F didn't agree making the following points in response:

- It was agreed that Elevate hadn't acted fairly.
- Elevate confirmed it hadn't made her aware of any potential problem with the direct debit which might cause any delays. And it had apologised for that situation and confirmed it would provide feedback to the relevant manager to ensure there was no

reoccurrence.

- But while the terms and conditions (Ts&Cs) stated that she would be liable for any shortfall between the transfer value and sale proceeds – it didn't say Elevate would hold funds until any outstanding commitments had "cleared". So she didn't think it had acted within its own Ts&Cs.
- She thought a comparison with her husband's identical (timed) transfer was reasonable as, had Elevate followed it Ts&Cs, the direct debit issue wouldn't have affected the transfer and it would have completed around the same time.
- As her funds had been held in cash from mid-October until 3 November 2023, she didn't think she had been treated fairly as her pension had been impacted.

The investigator wasn't persuaded to change his view as he didn't think Elevate needed to amend its usual process for an outstanding direct debit that Mrs F and her adviser would have been aware of. He said he'd seen nothing to suggest Mrs F would have taken a different course of action had Elevate made her aware of the implications of the direct debit, but thought it should compensate her for the impact of that lack of communication. He also explained that the reference Mrs F made to the Ts&Cs wasn't applicable to the transfer and instead referred to delays to the process of purchasing funds.

Mrs F said she wanted her complaint to be referred to an ombudsman – so it's been passed to me to review.

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.

And having done so I've reached the same conclusion as the investigator which I can imagine is an outcome that will disappoint Mrs F. So I'll explain my reasons below.

<u>Did Elevate delay the transfer according to its usual transfer process?</u>

Elevate has told us that its normal process for transferring to another platform or provider is to sell the assets within the pension at the first opportunity and then to transfer the cash as soon as all the outstanding requirements have been met. So I've looked at what happened here with that service standard in mind. In this case the transfer instruction was received on 13 October 2023. The funds were instructed to be sold the following day and the cash was ready to be transferred on 19 October 2023 – which was a total of four working days. I'm satisfied this part of the process was completed in a timely manner.

Unfortunately there was an outstanding direct debit on the pension account which was due to be drawn the following Monday 23 October, meaning the transfer was delayed while the debit cleared and further fees which had become due were also deducted from the cash. As a result the transfer wasn't completed at Elevate's end until the following Monday 30 October 2023.
Again I don't consider that to be unreasonable and I don't think Elevate delayed the actual transfer. However the disinvestment proceeds were held in cash during this time while the direct debit and fee payments were cleared.

So the question to consider around any possible delay is whether Elevate acted fairly and reasonably by holding the cash and not completing the transfer until those payments had been safely made. Mrs F says it wasn't fair and Elevate acted outside of its Ts&Cs by not either making her aware of a delay being caused by the direct debit or holding onto the cash during that time. She thinks Elevate could easily have transferred the bulk of the funds retaining enough to cover the direct debit. She referred to her husband's transfer, which was requested on the same date but completed on 22 October 2023, as the benchmark of what should have happened to her transfer.

I've looked carefully at the plan Ts&Cs and in particular the section referred to by Mrs F. In full it said, "*Any order to purchase investments using a direct debit instruction will be placed automatically on the date we are due to receive your payment.*

If money is not available on settlement because your chosen method of payment is not successful we will sell the investments purchased and cancel your existing order.

You will be liable for any shortfall between the amount paid for the investment and the amount raised by the sale. If this happens, we may write to you or use our disinvestment strategy process, which sets out which investments will be sold to cover the cost of any shortfall."

I think this refers to a separate scenario in which investments (funds) are purchased using a direct debit instruction, and where there are insufficient funds in the pension to cover the purchase. So I don't think its relevant to the complaint here. But more generally I haven't seen any reference in the Ts&Cs to a specific process for the transferring of plans to another provider.

While Mrs F is right to say it doesn't specify Elevate should hold onto cash awaiting clearance of charges to the account, it also doesn't make any provision for part payments or for transferring and holding cash to cover any remaining fees. So in this case I think Elevate needed to carry out the transfer in accordance with its normal process for such actions, which has been set out above. That means that I don't think it was obliged to offer solutions which were outside of its normal process and so I don't think it needed to consider alternatives such as partial transfers or completing the transfer while retaining sufficient cash to cover the direct debit. This would be asking Elevate to go "above and beyond" its normal procedures which I don't think I can reasonably tell it to do.

I've also considered the problem caused by the direct debit itself and who should be responsible for ensuring it was either cancelled or didn't cause a delay. The direct debit as I understand it was set up to facilitate payment to another investment. It would have been set up by Mrs F or her adviser for that purpose. They would also have been aware of it and known the dates it was usually debited from the pension account. And the direct debit could only have been cancelled at Mrs F's request. Elevate wouldn't have been able to make any alteration to the debit nor would it have had any authorisation to cancel it or be aware of its future purpose. In my view Elevate's only consideration was to ensure the debit was paid from the account each month and not to take any action to obstruct that outcome.

So when the transfer was progressing I can't reasonably say Elevate had any responsibility other to honour the direct debit ensuring it cleared before the transfer could complete.
I think Mrs F was best placed to be aware that it was due at some point in the month she requested the transfer and take action accordingly. So I don't think Elevate caused any necessary delays to the transfer itself.

But I do also need to consider whether Elevate could have done more to make Mrs F aware of the implications of the live direct debit on the account, particularly that it could have delayed the transfer if all other outstanding requirements were met and it hadn't cleared the pension account.

<u>*What more could Elevate had done regarding its communication?*</u>

Mrs F feels that Elevate should have made her aware of the problems that could be caused by the outstanding direct debit. And I note in its final response Elevate said, "*if we knew there was an outstanding DD with bouncer still possible, we could've discussed this at the time to set expectations when the sells would be placed but also to set expectations when the cash would likely be received. We failed to set expectations…."*

So, depending on when it was aware of the direct debit during the process, there's little dispute that Elevate could have done more. And I think I agree with that position, which was also reached by the investigator. He recommended that Elevate pay an additional £100 – so £150 in total for the impact this lack of discussion had on Mrs F. I think that's within the range of what I would expect to see for such matters, and I think it's fair and reasonable in the overall circumstances.

But I also need to explore whether that provision of an explanation along the way may have changed Mrs F's actions here, especially as it forms the main part of her complaint that she's lost around £2,700 in the value of her pension because of the overall time the transfer took.

What might Mrs F had done?

Clearly, I can't know what actions Mrs F would have taken and so I have to draw my conclusions on the balance of probability and what I think was *most* likely to have happened. If Mrs F had wanted the direct debit to be cancelled she would have needed to inform Elevate, so in the event that she didn't it's reasonable for Elevate to assume it was required to stay in place. So, I have to think what Mrs F would have done had Elevate contacted her at that point to raise the issue of the direct debit.

Mrs F wanted to transfer to another provider as a result of a recommendation from her adviser. The same recommendation was made to her husband and so I have to assume it was simply because the adviser believed the other proposition was in their best interest. So if Elevate did explain the position with the direct debit I think Mrs F only had two alternatives. One was to accept the position and any extension to the transfer process because of the outstanding payment due on the account, or the other was to take action either by cancelling the direct debit or requesting a hold on the disinvestment of her funds.

In Elevate's complaint notes to us I've seen an entry on 14 October 2023 about the outstanding direct debit. This was the same day that it committed to selling the funds within Mrs F's plan. So I think it's reasonable to think Elevate could have contacted Mrs F about the outstanding direct debit sometime after 15 October 2023.

On learning that her investment may be held in cash for slightly longer than expected, Mrs F could then have either tried to cancel the direct debit – which I think may have been difficult at that point given the proximity to the date it was due, or she could have asked Elevate to unwind the sale of her assets – again if it were possible to do that.
I don't think Mrs F would have been focused on the value of her investments at that point – she had no reason to suspect either significant falls or rises in the (now sold) funds, so I'm not persuaded she would have viewed taking a different course of action as necessary at that time. There would have been no suggestion of any issues with the transfer – simply a delay to its completion and I think Mrs F would have had no basis on which to decide to take one of the other possible alternatives she had.

Of course I can't discount that Mrs F might have asked her adviser what she should do – and it's possible that he might have further considered the implications of remaining out of the market for any extended period. But without the benefit of hindsight of now knowing what happened with the investment performance while Mrs F's assets were held in cash, again I see little benefit in advising her to do anything else apart from allowing the process to continue. There was the chance that the investment may also have fallen during that time and I think the risk of causing Mrs F a financial loss would have also been something to consider. It would seem to me that a suggestion of what Mrs F would have done is now very much with the benefit of hindsight about what happened to the investment – which wouldn't have been known or foreseen at that time.

Mrs F wouldn't have been aware of any possible subsequent change in the value of her investment had the process been extended, so I think it's more likely than not, having been given a clear explanation of what was happening that Mrs F would have accepted there might be a short delay in the transfer process and agreed for things to carry on as they were. I don't think Mrs F wouldn't have had any reason to take alternative action at that time.

But even if I am wrong in my interpretation of what I think was likely to have happened I note that Elevate carried out a loss calculation of Mrs F's position had the sale been put off until 24 October 2023. This sits within the realm of what Mrs F might have done if she'd been made aware of a possible delay and decided to suspend the sale of the assets until the debit had been cleared. The loss calculation showed that Mrs F would have received £1,774 less in cash had that been the case – so she received a higher value as a result of Elevate's actions than she might otherwise have done. So even if I were of the opinion that the sale might have been delayed Mrs F would have been worse off.

However, in light of that evidence I wanted to confirm why Mrs F felt she had suffered an investment loss. She has confirmed the loss was calculated on the basis that her transfer should have completed at the same time as her husbands. In other words a direct comparison of the value of both plans being transferred on the same day (22 October 2023).

But as I've said previously, I'm satisfied that Elevate acted fairly in the way it handled the transfer, so it wouldn't be fair to consider a loss against a benchmark (Mr F's transfer) that Elevate couldn't have met in the way it did (correctly) process the transfer. Elevate's error here - which it has accepted – is that it could have made Mrs F aware earlier of the possible implications of the outstanding direct debit. But as I've set out above, I'm not persuaded that even if it had done that, Mrs F would have taken alternative actions.

Putting things right

Elevate should pay Mrs F £150 in total for the impact of not making her aware earlier about the implications of the outstanding direct debit. If it has already paid the original £50 as suggested in its final response letter this requires an additional payment of £100.

My final decision

For the reasons that I've given I uphold Mrs F's complaint against Elevate Portfolio Services Limited in as much as it should pay her a total of £150.
Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 5 December 2024.

Keith Lawrence
Ombudsman