

The complaint

Ms G has complained that Curtis Banks Limited (CBL) caused a delay in transferring her pension benefits to a new provider (Scheme A).

She would like to be compensated for any financial loss she has suffered as a result as well as the distress and inconvenience that this has caused her.

What happened

Ms G held a self-invested personal pension (SIPP) with CBL. On 1 March 2023 Ms G instructed CBL to transfer funds to Scheme A. CBL did not review this request until 14 March, sending instructions to the investment manager on 15 March 2023. The funds were received by CBL on 5 April 2023 before being sent on to Scheme A on 12 April 2023.

Unhappy with the delay and believing that she had suffered a financial loss as a result of this delay, Ms G complained to CBL on 18 May 2023. CBL responded to her complaint on 22 May. In its response, it acknowledged and apologised for its delay in acting on her initial instruction. In total, it estimated that it had been responsible for 11 working days of delay. It offered to undertake a loss calculation based upon the investment decisions Ms G made with Scheme A. It also offered her £150 in respect of the distress and inconvenience that its errors had caused her.

Following this response, Ms G contacted CBL on 27 September to complain that she had not heard any more from it in respect of the compensation she had been offered. When she contacted CBL, it incorrectly addressed her on both the telephone and in emails.

CBL responded to her complaint on 5 October 2023. It acknowledged the poor service she had received, increasing its offer in relation to her distress and inconvenience to £300. It also calculated her financial loss as a result of the delay to be c£2,600.

Ms G remained unhappy with this outcome. She wasn't satisfied the loss calculation was correct and she believed CBL had not used the correct dates when calculating her loss. Ms G also didn't feel the compensation for distress and inconvenience awarded was appropriate, given her personal circumstances at the time, which CBL was aware of.

Unhappy with CBL's decision, Ms G brought her complaint to this service. Our investigator reviewed all the evidence provided and formed the view that Ms G had been treated unfairly by CBL. They recommended that the loss calculation should be undertaken using an earlier date than CBL had suggested, and that the compensation for distress and inconvenience be increased to £500.

Both Ms G and CBL did not agree with aspects of our investigators view and so the complaint has been passed to me to make a final 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.

Having done so, I have reached the same conclusion as our investigator and uphold this complaint.

I will explain now how I have reached my conclusions.

Firstly, I think it's important to reflect upon the role of this service. Our role is to impartially review the circumstances of a complaint and make a decision on whether a business has made errors or treated a customer unfairly. Where it has, we expect a business to compensate a customer for any financial loss and distress and inconvenience they have suffered as a result. Consequently, I would need to find it fair and reasonable that any financial loss Ms G has suffered results from any delay caused by CBL.

Both parties accept that the divestment and transfer of Ms G's funds was delayed, at least in part, by CBL – and that they are responsible for any loss that Ms G has suffered as a result. The matter in question is, therefore, the extent of the delay caused by CBL and the date the transfer should have taken place – upon which the loss calculation should be based.

To establish this, I have looked at the evidence provided to establish what I think should have happened in this situation.

The first stage of the transfer process was Ms G asking Scheme A to submit a transfer request to CBL, which it did on 1 March 2023. CBL did not review this request until 14 March, some ten working days later. It then passed the request through to the investment manager to carry out the divestment of Ms G's funds on the following day, 15 March 2023.

CBL has provided its guidance notes for transfers out that took effect on 1 January 2024. While I appreciate that this date is after Ms G's transaction took place, I find it reasonable to assume that this guidance would not have changed significantly from that in force at the time. This guidance states that:

We aim to complete this [stage 1] within 3-5 working days of receiving your completed discharge form.

CBL also said in its first response to Ms G's complaint that it should have completed this review in three working days, which is in line with its published guidance. Consequently, I find that it should have completed its review by 6 March 2023. As I noted above, it sent the divestment instruction to the investment manager on the following working day, which I think is reasonable in the circumstances. I considered Ms G's view that it should have passed the instruction on the same working day but still consider that submitting this the next working day is reasonable - particularly as this would have meant the first stage of the transfer being completed in four working days, within the three to five days CBL quoted in its guidance.

Consequently, I find that the request to the investment manager should have been made on 7 March 2023, not 15 March 2023 and that CBL is responsible for this element of the delay.

In terms of the second part of the process, the divestment of the assets, this was carried out by the investment manager. While CBL will have an expectation of how long this should take, in its guidance it states:

We're reliant on third parties to complete your request, which does sometimes mean that we are unable to progress your application until the required information has been received. We'll keep you updated on the progress of your transfer.

In the case of Ms G's transfer, owing to an error, the trades were not placed until 21 March 2023, rather than on 16 March 2023. The investment manager carried out a financial loss calculation on Ms G's funds over that period and found that she had not incurred a financial loss, but rather a gain of c£2,400 during the delay at this stage. In any case, it would not be fair to hold CBL responsible for this part of the overall delay.

I've also considered CBL's view that I should use the same timescale (four working days), when making a decision on when the funds should have been divested. While I appreciate its view, I cannot agree with it. The investment manager has admitted to making an error which led to the divestment taking two days longer than it should have. I think it's reasonable to assume that this error would not have been replicated in any hypothetical timeline. Consequently, I agree with our investigator when they say that they consider that the funds should have been divested on 9 March 2023 if CBL had not initially delayed the instruction.

I can also see that although the fund manager initiated the transfer of funds to CBL on 29 March, it took 5 working days before the funds were received by CBL on 5 April. This is also something that is outside CBL's control and it would not be fair or reasonable to hold them responsible for any delay during this period.

CBL subsequently sent the funds to Scheme A on 12 April 2023, which received them on 14 April 2023. This is a further 5 working days, but I consider CBL ought to have been able to send the funds on within three working days, so I consider that CBL caused an additional two working days delay at this point.

Taking all this into account, I find that if CBL had not caused the delays it did, the divestment of Ms G's funds should have taken place on 9 March 2023, rather than 21 March 2023.

This also means that CBL ought to have sent the funds to Scheme A on 29 March 2023 rather than 12 April 2023. Consequently these are the dates to be used in the loss calculations that CBL will need to carry out.

In terms of the distress and inconvenience Ms G has suffered as a result of CBL's mistakes, I have considered the evidence provided by both parties as well as the guidance our service has published to ensure consistency and fairness of compensation levels. I can also see that CBL has acknowledged and apologised to Ms G for the mistakes it made when investigating her complaint. While complaint handling is not a regulated activity that I can investigate, I consider that CBL's mistakes in this regard have added to Ms G's distress and inconvenience at what was obviously a very difficult time for her.

Consequently, I agree with our investigator's view that £500 is fair and appropriate in the circumstances of this complaint.

Putting things right

It is my intention and the aim of this service that any compensation for financial loss should seek to put Ms G back into the position she would have been in were it not for the delays that CBL has caused.

To compensate Ms G fairly, CBL must:

- Compare the actual value realised by the disinvestment of Ms G's funds with the notional value if they had been disinvested on 9 March 2023

To calculate the notional value of the funds that should have been invested, CBL will need to approach the investment manager to confirm the value of each fund as at 9 March 2023

Compare the actual value of Ms G's benefits with the sum of the notional values of the funds that should have been disinvested on 9 March 2023, as calculated as above.

If the actual value is greater than the notional value, no compensation is payable. If the notional value is greater than the actual value, there is a loss and compensation is payable.

- If there is a loss, this amount should then be transferred into Ms G's pension with Scheme A to increase its value by the amount of the compensation and any interest due. 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.
- In addition, CBL should seek information from Scheme A as to the investments Ms G made when her funds were transferred to it. This information to include:
 - The fund name and ISIN reference
 - The amount Ms G invested
 - The date the fund was purchased
 - The purchase price of each fund on the date it was purchased
 - The current purchase price at the date of my decision
 - Any amount held in cash

CBL should use this information to calculate whether Ms G has made a further financial loss, assuming that any compensation due to the delay (as calculated above) was invested into the same funds and same proportions as her original investments. It should assume these investments were made on the same date and value as her actual investments.

- CBL should add interest to these amounts at the rate of 8% per annum simple from the date of my final decision until the date of settlement.
- If CBL is unable to pay the compensation into Ms G's pension plan, it should pay that amount direct to her. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the compensation 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 Ms G won't be able to reclaim any of the reduction after compensation is paid.
- The *notional* allowance should be calculated using Ms G's actual or expected marginal rate of tax at his selected retirement age.
- It's reasonable to assume that Ms G is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Ms G 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 15%.
- Provide details of all calculations to Ms G in a simple, easy to understand format.
- Pay Ms G £500 in respect of the distress and inconvenience CBL's errors have caused her.

Income tax may be payable on any interest paid. If CBL deducts income tax from the interest, it should tell Ms G how much has been taken off. CBL should give Ms G a tax deduction certificate in respect of interest if Ms G asks for one, so she can reclaim the tax on interest from HM Revenue & Customs if appropriate.

If the information about the funds Ms G would have invested in with Scheme A is not available, CBL shall use the benchmark of the FTSE UK Private Investors Income Total Return Index.

Actual value

This means the actual amount payable from the investment at the end date.

Notional value

This is what the investment would have been worth at the end date had it produced a return using the comparison with Ms G's investment strategy with Scheme A or the benchmark.

My final decision

I uphold this complaint. My final decision is that Cutis Banks Limited should pay Ms G the amounts calculated above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G to accept or reject my decision before 5 September 2024.

Bill Catchpole
Ombudsman