

The complaint

Mrs D complains that National Westminster Bank Plc delayed a pension payment for her and Mr D (complaint dealt with under separate reference) and the result of this was the loss of pension tax relief. Mrs D says this will not be able to be reclaimed at a later date and has been lost for good. Mrs D has been represented in this complaint by Mr D.

What happened

On 5 April 2023, the last day of the tax year, Mr D went into a NatWest Branch to make payments into his and Mrs D's pensions. The two payments were £25,892.61 and £28,277.62. Mr D paid to use the CHAPS payment service, which NatWest says if made before 2.59pm would be made the same day. The payments were made before this cut-off time and so should've been sent the same day.

Unfortunately, it became apparent the next day this hadn't occurred. Mr D tried to get the payments cancelled but to no avail and they were sent and reached the SIPP provider on 6 April 2023.

Mr D complained to NatWest on Mrs D's behalf, her adviser had told her she had unused pension contribution allowances from the 2019/2020 tax year. And by making these contributions she could receive tax relief of up to 45%. But as the payment missed the tax year and the carry forward rules, which allowed Mr and Mrs D to use previous years allowances, only allow a person to go back three years, the allowance was lost.

NatWest responded to apologise for the delayed payment and offered Mr D £250 in compensation – in relation to the complaint as a whole – so including Mrs D's delayed payment.

Mr D was unhappy with this and raised a complaint with our service as he believes NatWest's offer doesn't account for the losses he and Mrs D have suffered in their pension. In the years subsequent Mr D and Mrs D have used their full allowances as part of a wider financial plan to maximise their pension contributions. The money that should've gone in for the 22/23 tax year remained in cash within the SIPP as Mr and Mrs D plan to purchase a commercial property with it.

We subsequently found out from NatWest that the issue with the payment was due to the forms being scanned without full sight of the branch manager signature and this caused the delay.

Our investigator looked into matters and upheld the complaint. He said that Mr and Mrs D had lost out on the tax relief that they could've got from those contributions. In the subsequent years they had maxed out their allowances left, so going forward they had their standard personal allowance of up to £60,000. So the loss was purely on the tax relief Mr and Mrs D could've got on the leftover allowance lost in the 2019/2020 tax year. The investigator said that whilst Mr and Mrs D are planning to maximise their pension contributions to their personal allowance limit and have done recently, it is likely Mr and Mrs D's plans could change in the future and it's unlikely they will use all of their contribution

allowance in all of the years until retirement. So this lost tax relief could be reclaimed at some point in the future.

The investigator recommended that the lost growth on the tax relief that Mr and Mrs D should've received within their pensions, should be paid for ten years. He said the rate should be the rate in which the SIPP was paying on cash and on the basis of simple interest rather than compound. As that is where the money resides at the moment and it was difficult to say what returns Mr and Mrs D may receive on a commercial property.

Mr D responded to say he was unhappy with the assumption that in the future they will be able to reclaim the lost allowance. He said he'd shown they had clear plans as part of their remuneration from their company to maximise their pension contributions and they would do that until retirement. So he felt the ten years limit on the growth was incorrect and didn't fairly compensate them for NatWest's error.

Our investigator responded to say Mr D was effectively saying they'd completely use their annual allowances, currently £60,000, every tax year until they are 75 years old or stop working. He thought this a more unlikely scenario than being able to get tax relief on the delayed pension contribution eventually.

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 agree with the investigator's findings and for broadly the same reasons.

I can appreciate why Mr D is unhappy with the redress recommended. His view is Mrs D has lost out on the contribution amounts and the tax relief included on top of those amounts forever. But she hasn't lost the contributions, the funds that she didn't contribute to the pension due to the restrictions of her allowance she will retain to use for other purposes. The tax relief I agree has been lost for now. The investigator's redress compensates Mrs D for lost growth on that tax relief for ten years.

I appreciate this is not a perfect solution and doesn't put Mrs D into the position she would've been in immediately. But that simply isn't possible due to the contribution limits that apply to personal pensions, so a fair and reasonable approach to putting things right has to be produced rather than an exact one. And I am required to be impartial and fair in my decision making and redress awards.

Mrs D has undoubtedly lost out on the tax relief and the growth on the missed contributions in the short term. But as the investigator has said, if Mrs D in the future does not use her full allowance, she will be able to use these funds then and receive tax relief, if she chooses to do so. And in the meantime Mrs D could invest the money she retained outside the pension until this point occurs to mitigate any losses in investment growth. As well as the money she receives upfront as redress.

I appreciate Mrs D has a plan in place currently to maximise her pension contributions, but I have thought carefully about whether this is more likely than not to be carried out fully until retirement – which is 20+ years' away. And I do think it's unlikely that those plans will continue forever until retirement. So much could change in that time, there could be new priorities for their money, life events, they may want capital for re-investment, their businesses may not be as profitable, they could sell up, legislation could change and so on. So, I don't think it is fair to redress them on the basis of the tax relief being lost forever and

Mr and Mrs D maximising their personal allowances up until retirement. I think it is more likely than not that Mr and Mrs D will be able to mitigate their position at some point in the future.

Also in considering what is fair to put things right, I also have to consider the context within which the mistake occurred. It's clear that making the payments in time for the end of the tax year was very important to Mr and Mrs D. And the fact that they were not has caused them trouble and upset. But by leaving it to the very last day of the tax year, they created the situation where any mistake or delay would result in those contribution allowances being lost. All of the risk was put on NatWest completing the payment within a day. I understand Mr D said he was waiting for calculations of their allowances to be received and then was away until the 5 April and this was the first time they could get to the branch. But the fact remains by leaving something to the last possible moment meant that any delay would have the consequences that Mrs D has now suffered.

That said there is no doubt that NatWest ought to have made the payment on the same day and it was their mistake that caused this not to occur. Had it done as it should've done Mr D and Mrs D's payments would've been made on time. So the complaint has been upheld for that reason but in considering the redress which as I've said cannot be a perfect solution, I've thought carefully about this from all sides and I think a ten year period to mitigate this situation is on balance fair and reasonable. So Mrs D will receive growth on the sum that would've been in her pension for a period of ten years, within which she still will have access to the money that ought to have been in her pension had she not had her allowance reduced by the delay. She will also receive her redress upfront representing the growth she would've got over ten years. I think it is more likely than not that within that ten years she will have the opportunity if she wishes to do so to add this to her pension funds and therefore mitigate any losses.

I've also thought about the trouble and upset award made by NatWest, which was paid directly to Mr D's account. The investigator chose to split this across the two cases - £125 each. But in reality as Mr D has been the one dealing with this situation it is mainly him who has been affected by the trouble caused by this mistake. I think £250 across the two complaints is broadly fair and reasonable here, given the circumstances of the error. And I understand this has already been credited to Mr D's account.

Putting things right

To compensate Mrs D fairly, NatWest must:

- Work out the tax relief that would've been received by Mrs D upon the payment being received by her pension – and the subsequent additional tax relief she could've claimed.
- NatWest should add investment growth on this as set out below.
- Usually we would ask NatWest to pay into Mrs D's pension plan to increase its value by the total amount of the compensation and any interest. But this isn't a viable option as Mrs D has used up all of her contribution allowance and plans to do so again for this year.
- So NatWest 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 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 Mrs D won't be able to reclaim any of the reduction after

compensation is paid.

- The *notional* reduction should be calculated using Mrs D's expected marginal rate of tax in retirement, assumed to be 20%. It is also assumed that Mrs D will take a tax-free cash lump sum of 25%. So only 75% of the income would be taxed. A notional deduction of 15% therefore reflects the likely income tax Mrs D will pay.
- Pay £250 for the trouble and upset caused across the two complaints – so this works out at £125 each – I understand £250 has already been paid. If so, no further action is required here.
- Income tax may be payable on any interest paid. If NatWest deducts income tax from the interest it should tell Mrs D how much has been taken off. NatWest should give Mrs D a tax deduction certificate in respect of interest if Mrs D asks for one, so she can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Benchmark	From ("start date")	To ("end date")	Additional interest
tax relief due on contribution allowance lost due to the delay.	Cash rate available at date of decision from Mrs D's SIPP using simple interest method. This is compensation for lost investment growth and not interest – and so shouldn't be treated as interest in relation to the above.	Notional date of investment 5 April 2023	10 years from the date of investment	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance

Why is this remedy suitable?

I've decided on this method of compensation because:

- I think Mrs D will likely be able to mitigate her situation within 10 years. I think that is a fair period to provide compensation for the lost growth on the tax relief she would've received had the contribution been made earlier.
- Mrs D currently holds her SIPP in cash which she's told us is to be used for purchasing a commercial property. However, the SIPP has been in cash for some time and likely returns on the commercial property are difficult to quantify. So the cash rate within the SIPP seems a suitable rate to apply. In the event this is variable, the cash rate applicable at the date of decision should be used for the whole calculation period.
- A simple interest method is to be applied to the growth. Mrs D is a higher rate taxpayer now but she'll get the growth up front in a lump sum (and taxed on the basis she'll be a 20% tax payer in retirement) instead of having to wait 10 years to get it, or had it been in the pension, until retirement. She can then invest this redress outside of the pension and receive compound interest on that if she chooses to do so.

My final decision

I uphold the complaint. My decision is that National Westminster Bank Plc should pay the amount calculated as set out above.

National Westminster Bank Plc should provide details of its calculation to Mrs D in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 6 December 2024.

Simon Hollingshead
Ombudsman