

## **complaint**

Mr W complains about the delays caused by Alliance Trust Savings Limited (Alliance Trust) over the transfer of an existing portfolio from his small self-administered scheme (SSAS). He says he had to hold some funds in cash for longer than necessary and therefore lost the opportunity to invest when he should have been able to.

## **background**

The background to this complaint, and my initial conclusions, were set out in my provisional decision dated 5 September 2019 – a copy of which is attached and forms part of this final decision.

In my provisional decision I explained why I thought this complaint should be upheld and invited both parties to send any additional comments or evidence they wished to make. I said that there was no evidence to show that the transfer couldn't have been completed within 90 days of the date that Alliance Trust received the authority to transfer. I said that as Mr W's cash should have been available for investment before the date the transfer did actually complete, Alliance Trust should compare the value of his plan now with what it would have been if the cash had been invested earlier.

Alliance Trust said it would carry out a loss calculation in line with my provisional decision and asked for Mr W to provide the necessary investment details. It also said it would pay the amount recommended for the distress and inconvenience caused. But it said it wasn't aware that it took a payment of £1,124.40 from Mr W's account in December 2017, so it didn't think it should have to repay that fee. It said if the fee had been taken by another party then that wasn't its responsibility.

Mr W accepted the provisional decision but reiterated that the disputed fee from December 2017 wasn't charged by Alliance Trust but wouldn't have been deducted from his SSAS if the transfer had completed when it should have done.

## **my findings**

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Alliance Trust has accepted my provisional findings with the exception of the refund of the SSAS fee that was applied in December 2017. And having considered what both parties have said on that issue I see no reason to change the conclusions I came to in my provisional decision.

I've seen how the SSAS provider applied certain charges to Mr W's SSAS. Charges were applied in February, March and December 2017. There's no dispute that Mr W had to pay those charges – but only while the SSAS existed.

In this case I've said that the transfer of the existing portfolio – to a new SIPP platform – should have completed by 30 June 2017. So I don't think the SSAS should have been in force in December 2017 and therefore shouldn't have been the subject of any further fees.

I'm aware that these fees weren't levied by Alliance Trust. But I think it was Alliance Trust that caused the delays that meant the SSAS was still being held by Mr W when the fees

were due. So it follows that Alliance Trust should compensate Mr W for the fees being charged, because they would have been avoided if the transfer had completed when I think it should have done.

### **what should Alliance Trust do?**

To compensate Mr W fairly, Alliance Trust must:

Compare the current value of Mr W's SIPP with the notional value of the SIPP if it had been invested on 30 June 2017. If the *notional value* is greater than the *actual value*, there is a loss and compensation is payable. If the *actual value* is greater than the *notional value*, no compensation is payable.

If there is a loss, Alliance Trust should pay into Mr W's pension plan to increase its value by the amount of the compensation and any interest. 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 Alliance Trust is unable to pay the compensation into Mr W'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 compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid.

The *notional* allowance should be calculated using Mr W's actual or expected marginal rate of tax at his selected retirement age.

For example, if Mr W is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. However, if Mr W would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation.

Income tax may be payable on any interest paid. If Alliance Trust deducts income tax from the interest, it should tell Mr W how much has been taken off. Alliance Trust should give Mr W a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

In addition Alliance Trust should refund the charge of £1,124.40 that was deducted from the SSAS by the provider in December 2017 – with the addition of any growth it would have made from that date. This should be paid into the pension plan as above where possible.

Alliance Trust should also pay Mr W £450 as it previously suggested – for the distress and inconvenience this matter has caused him and the disruption to his retirement planning over more than a year.

### **my final decision**

For the same reasons I've already given in my provisional decision, I uphold Mr W's complaint against Alliance Trust Savings Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 14 December 2019.

Keith Lawrence  
**ombudsman**

## **COPY OF THE PROVISIONAL DECISION**

### **complaint**

Mr W complains about the delays caused by Alliance Trust Savings Limited (Alliance Trust) over the transfer of an existing portfolio from his small self-administered scheme (SSAS).

### **background**

Mr W held a SSAS and a self-invested personal pension (SIPP). In October 2016 his adviser recommended that he transferred both plans into a new SIPP on a different platform. The idea was that the existing share portfolio and structured products within the plans would be transferred in-specie to avoid being out of the market. All the other assets were to be sold and transferred as cash.

The appropriate funds within the SSAS were sold on 13 February 2017 and held in cash ready to be transferred. The transfer of assets from the existing SIPP was received one week later. However, there were delays in transferring the shares, in-specie, from the stockbroker account held with Alliance Trust, and after much correspondence between the parties the shares weren't completely transferred until early 2018. Thereafter the cash that had been held following the sale of SSAS assets was then invested into the new SIPP.

Mr W's adviser complained to Alliance Trust about the delay. He said that – because the assets were encashed in early 2017, they'd been held in cash for around one year and Mr W had suffered the loss of investment growth on the encashed assets over that time. The adviser said either the transfer should have completed in full much earlier, or the assets shouldn't have been encashed until the in-specie transfer was completed. He said the cash couldn't have been transferred before the rest of the assets as Mr W would have lost the fixed protection he had in place on his pension.

Alliance Trust accepted that it had caused some delays. It explained that it had experienced a large volume of transfers around that time and hadn't completed the transfer within its service standards of 90 days. It apologised and offered Mr W £450 for the delays and inconvenience caused by the matter.

But Mr W didn't accept the offer and remained unhappy, so he brought his complaint to us through his adviser, making the following points:

- Mr W had lost investment growth on the structured products and Cofunds assets that were cashed in but couldn't be transferred and reinvested until about 12 months later.
- Mr W had incurred fees with Alliance Trust that wouldn't have been taken if the transfer had taken place when it should have.
- The adviser's fees were based on invested funds not cash, so he'd missed out on some of his ongoing fees during the time of the delay.

One of our adjudicators looked into the complaint and said it should be upheld. She said that Alliance Trust had accepted it caused some delays but hadn't put Mr W back into the position he would have been if it had transferred the funds in a timely manner. She said it should compensate Mr W by putting him into the position he'd now be in if he'd transferred on 12 June 2017. She also said Alliance Trust should refund the fees that Mr W's SSAS incurred in December 2017. And she said it should pay a further £450 for the distress and inconvenience this matter had caused Mr W.

Alliance Trust didn't agree. Firstly it said that the award of a further £450 was unfair and it didn't agree to that. But it also questioned what cash was being referred to in the assessment as it believed the transfer was principally in-specie and it wasn't aware of any fees Mr W had incurred or any investment growth he'd lost.

The adjudicator confirmed she hadn't meant to recommend an *additional* £450 but remained of the same view. As no resolution could be found the case has been passed to me for a decision.

### **my provisional findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've seen that an instruction to transfer the entire holdings of the SSAS was sent to Alliance Trust on 22 February 2017. But following ongoing communication Alliance Trust needed authority to transfer which was provided by the existing scheme administrator (of the SSAS) in an email dated 31 March 2017. So I'm satisfied that at this point Alliance Trust was on notice to transfer and it hadn't raised any queries about missing or incomplete information.

There's no dispute that the transfer was subsequently delayed – Alliance Trust itself has accepted that delays until September 2017 were caused because it was experiencing a high volume of work and had also relocated offices. It hasn't offered any further explanations for the delays. But Alliance Trust says as the transfer was principally in-specie then Mr W hasn't suffered any investment loss because of the delay and therefore its offer for the inconvenience he's been caused ought to be acceptable.

Whereas Mr W hasn't argued he suffered an investment loss on the share portfolio but that the other assets he'd had to sell in preparation for transfer to the new SIPP couldn't be invested until Alliance Trust had completed the rest of the (in-specie) transfer. So he says these assets had to be held in cash for an unacceptably long time and could have had investment growth if Alliance Trust hadn't delayed the transfer.

I've seen evidence of the assets in question being sold and I've been given an explanation as to why the cash couldn't be invested on its own – that's because it would have been seen by HMRC as a pension contribution and would have negated Mr W's fixed protection.

So, as Mr W quite clearly has lost the opportunity for investment growth on his sold assets, and this seems to have happened as a result of the delays that Alliance Trust accepts it was responsible for – I agree with the adjudicator that Alliance Trust should put Mr W back as close to the position he would be in now if he'd been able to invest the cash into the SIPP within a reasonable period of time.

And I've very carefully considered what a reasonable time frame would have been. Alliance Trust has said that it has a service standard to complete transfers within 90 days, and although it hasn't provided any evidence to confirm this, that seems a reasonable period of time in which to complete transfers. And I've also borne in mind, that when Alliance Trust did start work on the transfer in September 2017, it says it completed the process by mid December 2017 which is around 90 days.

So I think that's a reasonable expectation – especially as Alliance Trust hasn't given any evidence to show there were further delays that occurred outside of its control and the process was primarily the re-registration of existing assets. There is a suggestion in an email dated 5 May 2017 that a form had been completed incorrectly but this hadn't been brought to anyone's attention despite evidence of numerous chasing and update request emails from the scheme administrator and the adviser.

And Alliance Trust has said there was delay of 17 days to get a CREST ID from the scheme administrator. So I think there's scope to accept some matters might have required additional work and this would have extended the process, but there's no real evidence to show that Mr W's transfer couldn't have been completed within the 90 period, which would have meant the cash could have been invested by 30 June 2017 – if as I've already suggested I take the email of 31 March 2017 as a starting point for the transfer.

Mr W's adviser has shown that the structured products that Mr W held matured on 21 March and 10 May 2017. So they too would have been available for investment before 30 June 2017.

Mr W has also complained about a fee of 0.35% that Alliance Trust charged from the existing plan while he remained invested. And in December 2017 a fee of £1,124.40 was deducted from the SSAS. As I've said that Alliance Trust ought to have completed the transfer in June 2017 then it follows that Mr W ought not to have paid that fee. So I think Alliance Trust should refund the fee with the addition of any investment growth it would have made if it had remained invested according to the investment strategy of the new SIPP, from the date it was actually deducted.

Mr W's adviser has complained that his ongoing fees were based on the investment within the plan and not any additional cash that was held. So he says he's not received the fees he was entitled to. But I can't consider any claim for fees from Mr W's adviser as he's not an eligible complainant here as it's not his plan. So I won't be asking Alliance Trust to make any adjustment for the adviser fees.

### **fair compensation**

My aim is that Mr W should be put as closely as possible into the position he would probably now be in if the transfer had been completed in a timely manner.

I think Mr W would have invested his cash holdings into his new SIPP earlier had he been allowed that opportunity and I'm satisfied that what I've set out below is fair and reasonable given Mr W's circumstances and objectives.

### **what should Alliance Trust do?**

To compensate Mr W fairly, Alliance Trust must:

Compare the current value of Mr W's SIPP with the notional value of the SIPP if it had been invested on 30 June 2017. If the *notional value* is greater than the *actual value*, there is a loss and compensation is payable. If the *actual value* is greater than the *notional value*, no compensation is payable.

If there is a loss, Alliance Trust should pay into Mr W's pension plan to increase its value by the amount of the compensation and any interest. 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 Alliance Trust is unable to pay the compensation into Mr W'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 compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid.

The *notional* allowance should be calculated using Mr W's actual or expected marginal rate of tax at his selected retirement age.

For example, if Mr W is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. However, if Mr W would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation.

Income tax may be payable on any interest paid. If Alliance Trust deducts income tax from the interest, it should tell Mr W how much has been taken off. Alliance Trust should give Mr W a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

In addition Alliance Trust should refund the plan charge that it deducted in December 2017 with the addition of any growth it would have made from that date. This should be paid into the pension plan as above where possible.

Also Alliance Trust should pay Mr W £450 as it previously suggested – for the distress and inconvenience this matter has caused him and the disruption to his retirement planning over more than a year.

**my provisional decision**

For the reasons given I intend to uphold Mr W's complaint against Alliance Trust Savings Limited.

Keith lawrence  
**ombudsman**