

## complaint

Mr M complains that Alliance Trust Savings Limited (ATS) delayed the *in specie* transfer of his self-invested personal pension (SIPP) to another SIPP provider.

## background

On 10 July 2017 Mr M told ATS that he wanted to transfer his SIPP portfolio elsewhere. His SIPP trustees owned the investments in the portfolio, so they had to approve the transfer. They confirmed this on 25 July. However, it took ATS until 14 August to begin making the necessary arrangements – it says due to ‘*a high volume of requests being received*’.

There was a shares component of the SIPP to be transferred *in specie*, and a cash component. However between 31 July and 27 September a further six dividends were received, increasing the cash account by about £105,000. On 19 October ATS transferred the total cash of about £130,000 directly to the destination SIPP provider – rather than making it payable to Mr M’s trustees as required. Although the payment was promptly returned by the destination provider, ATS only correctly sent it to the trustees for investment in Mr M’s new SIPP on 8 December 2017.

When Mr M complained about the delay, ATS assured him that it had reversed any account fees which were unnecessarily collected during the period of this delay. It also apologised for the call wait times he’d experienced, again due to the high volume of requests. It offered him £200 as a goodwill gesture in respect of the inconvenience caused.

Mr M wasn’t happy with this. He believed he should be paid £500 for his trouble, and interest on the delayed cash transfer at 8% per year simple – coming to £2,775. So, one of our investigators considered the complaint. In summary, she concluded:

- ATS hadn’t acted as quickly as it could have done once it received the trustees’ agreement to transfer the SIPP on 25 July 2017. It then caused a further delay by sending the proceeds of the cash account to the new SIPP provider directly.
- Mr M had been charged a ‘standard account charge’ of £24 in November 2017 after these funds were incorrectly sent. This should be refunded to him also.
- Interest of 8% per year wasn’t the right basis of compensation for the delay, as these were funds that would have remained within a SIPP.
- The new provider would have paid 0.005% per year interest (about £6 over the period in question), as opposed to the nil interest Mr M had been getting with AT.
- Unless Mr M could demonstrate (without hindsight) that he would’ve made particular investments using the proceeds, it was therefore appropriate for ATS to pay him £30 in additional compensation.

ATS accepted the investigator’s view but Mr M didn’t. To summarise, he said:

- She hadn’t considered the potentially grave consequences, had the £130,000 mistakenly transferred to the new SIPP provider been banked. There might have been problems with HMRC (potentially only after his death). He was keen to avoid these, having had other regulatory problems with his pension in the past.
- When the cash was eventually received it was invested fully within 48 hours in AstraZeneca shares. He doesn’t hold money in cash.
- Newspaper articles suggest there are a high volume of complaints against ATS. He was told the reason the transfer couldn’t be made was because a manager was on holiday. ‘*The time, phone calls, correspondence chasing ATS that I and others [experienced] need much more compensation.*’

- Would it be expected that dividends should be transferred as they come in?

Our investigator told Mr M that she'd considered the implications of having the wrong payee. But it was unlikely the new provider would have accepted a sum they weren't instructed they would be getting (and in fact they didn't do so). She added that in any case where a genuine error has been made, it could also be unwound without there being lasting implications.

Whilst the investigator was considering whether compensation for the delay should take the form of lost investment growth (rather than interest), Mr M contacted us again. He said that when he invested in AstraZeneca in December 2017, he'd also looked at Old Mutual shares but he felt their price was too high. But he had bought them in another account earlier. So he thought he would have bought Old Mutual shares with the extra £130,000, had it been successfully moved out of his SIPP in October 2017.

The investigator took into account that ATS had potentially caused a delay of up to 20 days in July 2017 by not processing the transfer out as soon as it physically could. And there was also a delay of 53 days from the point the wrong transfer was attempted (16 October 2017) to when the correct transfer was made (8 December 2017). But she thought it remained likely (without the benefit of hindsight) that Mr M would still have bought the AstraZeneca shares had these delays not occurred. That was in part because he already had AstraZeneca shares in his pension portfolio. And as the price of the AstraZeneca shares was dropping over this period, she didn't consider Mr M had made a loss.

Mr M didn't agree with this. He pointed out that he only bought the AstraZeneca shares in December *because* the price had gone down. And he's also bought Old Mutual shares in the past, so it wasn't unlikely that he might have bought those. He added that he already had an established SIPP with the new provider which had existing shareholdings.

## **my findings**

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

I agree with our investigator that ATS did cause a delay in transferring the cash proceeds of Mr M's SIPP. There doesn't seem to be an issue with the in specie part of the transfer because, of course, those shares remained invested – so Mr M won't have lost out. But there were two main issues of delay with the cash transfer:

- ATS took from 25 July, when it had trustee agreement to make the transfer, until 14 August when it actually started acting (20 days)
- It took from 16 October, when it first issued the cash transfer to the new provider directly, until 8 December when it resent the payment to the trustees (53 days)

In respect of the first delay, this is very much a maximum estimate; I consider it could reasonably have taken up to 5 days to turn around a request, but 20 was excessive. And in respect of the second, I can see how this mistake occurred (unfortunate though it was). Mr M had a beneficial interest in a SIPP that was owned by the trustees. So investment instructions had to formally come through them, but Mr M had unilaterally given the instruction. This was a case of a genuine error by ATS, although it shouldn't have taken anything like 53 days to fix. So I'm satisfied that there was little risk of any consequences falling on Mr M given that ATS, as the pension provider, could explain what had happened.

I don't think that it can be said that there were any other material delays in this case that have caused Mr M a financial loss. I say this because it would always have taken ATS some time to negotiate the stock transfers to the other provider. And I don't think it was

unreasonable for ATS to accumulate ongoing dividends in the cash account until such time as the shares themselves had been transferred.

I understand that the settlement date originally set for the shares was 16 August 2017, but dividends were still being received as late as 27 September 2017. I can't say it was wrong for ATS to wait for the further dividends it thought it was likely to receive, noting that there would always have been some lag whilst the stock re-registrations took place. Otherwise, successive cash transfers would have needed to be made – and I can't see that ATS ever undertook to provide this level of service.

Mr M could potentially have made enquiries about reinvesting the dividends with ATS temporarily and including those new investments in the in specie transfer. But of course, that carried the risk that it would frustrate the stock transfer process itself. In essence I think the issue of how to deal with dividends is one of the complications in attempting an in specie transfer, to which there is no entirely satisfactory solution.

I don't dispute that Mr M was likely intending to invest the cash transfer as soon as he received it in his new SIPP. He's demonstrated this when he bought the AstraZeneca shares on 21 December 2017. The investigator has already explained that whether ATS is held responsible for the 53 day delay above, or up to the full  $53+20 = 73$  days, the AstraZeneca share price on either corresponding earlier date was higher than the 21 December price. So if he had acted in exactly the same way and bought AstraZeneca shares around (say) mid-October 2017, Mr M would have made a loss of between 2-4.8% depending on the date..

Mr M says he wouldn't have bought AstraZeneca shares at that time because his decision to do so in December was based on a recent fall in the share price. I've looked at the charts and it is true that there was a fall in the share price from early November to early December – of the order of about 8%. But the very nature of investing in shares is that it's uncertain. I don't think Mr M would have been able to confidently predict that this fall was about to happen if (say) he'd bought the shares during October 2017. In fact the share price had been increasing through August and September – it had gone up by about 18%.

Investment decisions can of course be made on the basis of short-term speculation in share prices, and as Mr M trades in directly held shares rather than funds I don't doubt that this may well be what he's seeking to do with his SIPP. But it's far from guaranteed to be successful. Not even the best fund managers, whilst obtaining good long-term growth, get their timing in individual stocks 'right'. It's only with hindsight that the most opportune time to buy or sell a share can be seen. Where Mr M has referred to the Old Mutual shares he might have bought, I can see that the price of these rose by about 19% during December 2017. But during October 2017 the price had been looking relatively 'flat' – and I can't see that he could have confidently forecast this increase.

Mr M initially requested compensation based on 8% per year interest – the rate this service would use to compensate a consumer who was deprived of the opportunity to *spend* money. But this was money in Mr M's SIPP, which he was planning to invest. So I don't agree that rate is appropriate here. It might have been easier to judge what growth Mr M could have achieved had he been investing in mutual funds, as these have less of a subjective element in their selection. Of the two shares Mr M mentioned, I would need satisfied on the balance of probabilities that he would have bought the Old Mutual shares in October 2017 rather than AstraZeneca, in order to consider awarding more compensation.

Having thought about this carefully, as it wasn't possible to precisely predict future movements in share prices, I consider the basis of compensation already put forward by the investigator is fair and reasonable in the circumstances of this case. It gives Mr M the

interest payable on the SIPP bank account with his new provider, even though I can't safely say it's any more likely that he would have made an investment gain than a loss from investing in shares.

In order to be sufficiently satisfied that Mr M would have invested in one share above all others, I would need to see contemporaneous evidence that this was his intention in October 2017. Such as a particular share being consistently named in his complaint from the outset, rather than potentially with hindsight. Unfortunately I can't see that this level of evidence exists in this case.

So in summary, I agree with the investigator that Mr M is owed the additional interest he would have achieved in the new SIPP bank account (albeit this is only £6) – and the additional £24 SIPP fee that shouldn't have been collected, given that ATS was responsible for the delay. This is in addition to the £200 compensation for distress and inconvenience which ATS has already issued, but Mr M hasn't banked.

Mr M has commented about other complaints being made against ATS, and referred to the issues experienced by him 'and others'. But my role is not to consider whether ATS's processes and staffing are 'up to the task' – that's the role of the regulator, the Financial Conduct Authority. I'm only looking at Mr M's individual complaint.

I consider that the main mechanism for compensating Mr M here should be in terms of identifying if there is any financial loss, so that he isn't out of pocket. I haven't been satisfied there is any significant financial loss. But I think a payment of £200 for the distress and inconvenience Mr M encountered would be broadly consistent with the award I would have made, had ATS not already offered it. So I make no further award.

### **my final decision**

I uphold Mr M's complaint and require Alliance Trust Savings Limited to pay him a total of £230 in respect of the distress, inconvenience and financial loss suffered from his delayed SIPP transfer.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 1 December 2018.

Gideon Moore  
**ombudsman**