

## Ombudsman's Determination

Applicant	Mrs S
Scheme	Barnett Waddingham Self Invested Personal Pension ( <b>the SIPP</b> )
Respondent	Barnett Waddingham LLP ( <b>BW</b> )

## Outcome

1. Mrs S' complaint against BW is partly upheld. To put matters right, for the part that is upheld, BW shall pay Mrs S £500, for the significant distress and inconvenience she has experienced.

## Complaint summary

2. Mrs S has complained because she believes BW's delay in transferring her benefits to the SIPP has resulted in her incurring a financial loss.

## Background information, including submissions from the parties

3. Mrs S initially held benefits with Phoenix Wealth (**PW**) in a drawdown arrangement. On 7 September 2018, she visited BW and provided it with details of her PW accounts as it was her intention to transfer her funds from PW into the SIPP, to purchase a commercial property. The SIPP was established on the same day.
4. On the morning of 3 December 2018, Mrs S emailed BW and said:

"We have advised Phoenix Wealth that a request will be made by yourselves through the Orego [sic] system tomorrow -4<sup>th</sup> December 2018- for both accounts 3008300 and 3008301 to be cashed in. Our understanding is that the value will be based upon the value of funds at the end of todays [sic] trading and that funds will be transferred to yourselves within ten working days..."
5. On 4 December 2018, BW submitted the transfer request on Origo. In the morning of 6 December 2018, PW contacted BW and informed it that the transfer was being requested from the wrong Phoenix company.
6. On the morning of 7 December 2018, BW emailed Mrs S' husband Mr S. BW informed him that it had requested the transfer from Origo, but PW had contacted it to

say that it did not recognise the policy numbers. BW requested Mr S “double check” the references.

7. On the same date, Mr S replied to BW and said:

“...I am both curious and furious that this did not process as we instructed as clearly from the attached you will see the policy numbers I have provided were correct.

It was vital that the process was completed as instructed as I was concerned about possible further collapses in values. The values I had on the morning of instruction were £203414.97 (Policy 3008300) and £11488.46 (3008301).

These total £214,903.43 which is the value I expect to be returned and that should be sorted between yourselves...”

8. In the afternoon of 10 December 2018, PW contacted BW to query if all of the funds for both policies should be transferred as some of the funds were not crystallised.
9. On 12 December 2018, BW emailed Mr S and explained that PW had informed it that the original transfer had been rejected because it was sent to the wrong Phoenix company on Origo. BW explained that it had re-submitted the transfer request on 10 December 2018, but was advised by PW that the funds were not fully crystallised.
10. BW explained that the latest values of Mrs S’ PW policies were £194,217.93 for policy 3008300 and £10,958.42 for policy 3008301. However, those values were not guaranteed. BW also said:

“the consultant I have spoken to since has confirmed that the disinvestment price point is locked in on the date of the transfer request so please confirm how you wish to proceed...”

11. Mr S replied to BW and expressed his dissatisfaction with BW’s error. He said, “he expected [Mrs S’] account to be credited with the expected amount of £214,903.43 and any shortfall to be made up by [BW].”
12. Between 13 December 2018 and 21 January 2019, there was further correspondence between Mr S and BW concerning Mrs S’ transfer from PW to the SIPP.
13. On 21 January 2019, Mrs S emailed BW and asked it to request her funds from PW. BW replied on the same date and said, “we will action this today.”
14. On 23 January 2019, BW emailed Mr and Mrs S. It informed them that everything was fine with the transfer, and that it would be completed within five to seven working days. BW explained that the prices were locked on the day of request but, PW could not confirm the final transfer figures because fees and further distributions may have been made prior to the transfer. BW suggested that Mrs S should contact PW directly, if she wanted to know the amount transferred.
15. On 4 February 2019, BW emailed Mr S and informed him that it had received the following information from PW in relation to Mrs S’ funds:

- £10,851.97 on 25 January 2019
- £198,193.91 on 31 January 2019
- Total = £209,045.88.

### **Summary of Mrs S' position**

16. Mrs S says:-

- When she had the initial meeting with BW on 7 September 2018, to establish the SIPP, all the relevant paperwork concerning her investments with PW was given to BW. This included the account numbers and the latest statements at the time.
- As the stock markets were “very fluid”, it was agreed she would wait until an opportune date to request the transfer.
- On 3 December 2018, she emailed BW and asked it to request the transfer the next day. She informed PW that the funds would be requested on 4 December 2018, and PW confirmed that the total value of all funds amounted to £214,903.43.
- She was shocked to find out, on 7 December 2018, that the transfer had failed. It was later established that the transfer failed because BW had requested the funds from the wrong company.
- BW did not request the transfer again until 10 December 2018. The transfer was not completed as all funds were not crystallised, but BW did not contact her to inform her of this until 12 December 2018.
- The value of her funds had reduced so she decided to wait for “a recovery”. She instructed the transfer on 21 January 2019. This was completed smoothly, and the amount transferred was £209,045.58.
- BW has admitted in several emails, that it made an error when it originally submitted her transfer requests. Its excuses thereafter are not credible.
- The small amounts of uncrystallised funds were noted on the Origo system. PW has confirmed that a telephone call to it (PW), would have cleared the matter up immediately. However, BW did not contact her about this until 12 December 2018.
- BW has agreed that the “price point is locked in on the date of the transfer request.”
- She has suffered a loss of £5,857.55. This is the difference between the expected amount of £214,903.43 and the amount of £209,045.58 that was eventually transferred.
- She has also lost potential investment because of the delay and has suffered “a great deal of worry and concern.”

- The purchase of the commercial property had been agreed but due to shortage of funds, caused by BW's actions, she was only able to complete a majority purchase.
- She receives a rent from the tenant and if she gets relevant compensation, intends to complete the transfer of the balance of the property as soon as possible.
- BW has made an error and she should not "lose out" because of BW's incompetence.

### **Summary of BW's position**

- It is not easy to determine the earliest possible date the transfer may have occurred. At the time it had initially requested the transfer, not all of Mrs S' funds had been crystallised.
- There was a four working day difference between the date of the first transfer request on Origo (Tuesday 4 December 2018) and the first transfer request to PW (Monday 10 December 2018).
- PW has since quoted a service level agreement (**SLA**) of six working days to initially review pension transfers out.
- Based on the above SLA, had the request been sent to PW on 4 December 2018, it would have acknowledged it by Wednesday 12 December 2018 and informed BW that the transfer could not be completed as some of the funds had not been crystallised.
- BW would then have had to have contacted Mrs S to seek confirmation of the status of her funds, and re-request the transfer from PW when it received her response.
- BW does not publish SLAs but acknowledges that the above part of the process would "typically take" two to three working days. It would then have requested the transfer from PW on 17 December 2018. It would have then taken another six working days for PW to review and subsequently process the transfer out.
- BW's function in this process was to request the transfer. If a guaranteed disinvestment value was required, Mrs S should have instigated this directly with PW, prior to the transfer.
- BW is not responsible for or regulated to manage the investment held within the ceding arrangement.
- Therefore, it has not completed a loss assessment as it does not believe it is responsible for any loss incurred by Mrs S.

## **Adjudicator's Opinion**

17. Mrs S' complaint was considered by one of our Adjudicators who had initially concluded that further action was required by BW. The Adjudicator's findings are summarised below:-

- BW requesting a transfer of Mrs S' funds from an incorrect company amounted to maladministration. So, the Adjudicator considered whether this maladministration resulted in Mrs S incurring a financial loss.
- BW said that had it requested the transfer from the correct company on 4 December 2018, it would not have gone through, as some of Mrs S' funds were not crystallised. It provided a timeline of what it believed would have happened had it not made the error on 4 December 2018.
- After considering the information that both BW and Mrs S had provided, the Adjudicator created her own timeline to establish the earliest date that the transfer could have occurred. Details of the Adjudicator's timeline and the timeline of the events that actually occurred are in the Appendix.
- Based on her timeline, it was the Adjudicator's view that had BW requested Mrs S' funds from the correct company on Origo, on 4 December 2018, the transfer for account number 308301 would have completed on 12 December 2018, and the transfer for account number 308300 would have been completed on 18 December 2018.
- The Adjudicator appreciated that Mrs S believed the transfer would have been completed on 4 December 2018. However, not all funds were crystallised at that time. PW needed confirmation of what funds were to be transferred, and it also took PW a total of eight working days, to transfer all the funds to the SIPP. It was the Adjudicator's view, that the transfer would not have been completed on 4 December 2018.
- The Adjudicator was of the opinion that BW should complete a loss calculation to establish whether Mrs S had incurred a financial loss because of its delay. If she had, BW should compensate her accordingly.
- Although the Adjudicator thought that the transfers would have been completed on 12 and 18 December 2018, according to her timeline, BW would have re-requested the transfer of all funds on 6 December 2018. BW had previously confirmed to Mr S that the "the disinvestment price point is locked in on the date of the transfer request." So, any loss should be calculated using the date of 6 December 2018.
- The Adjudicator felt that the situation had caused Mrs S significant distress and inconvenience, so she should receive an award in recognition of this.
- To put things right, BW should:

- (i) contact PW to establish what the total transfer value of Mrs S' policies were on 6 December 2018.
  - (ii) compare the amount in (i) with the amount that was transferred in January 2019.
- If (ii) is less than (i), BW should:
    - pay the difference into the SIPP, along with interest at the base rate being quoted by the Bank of England from 6 December 2018 until the date the shortfall is credited to the SIPP.
  - BW should also pay Mrs S £500, for the significant distress and inconvenience she experienced.
18. Following receipt of the Opinion, there was further correspondence between my Office, BW and Mrs S.
19. BW confirmed that:-
- It had received confirmation from PW that the total transfer value of both Mrs S' PW policies at 4 December 2018 was £212,402.44 and the total value of the same policies at 6 December 2018 was £205,621.88.
  - The total value received from PW in January 2019, for both of Mrs S' policies was £209,045.88. Therefore, she did not incur a financial loss because of BW's maladministration.
20. Mrs S did not accept that she did not incur a financial loss because of BW's maladministration and in summary said:-
- At her initial meeting with BW on 7 September 2018, it was made clear that she wished to transfer all of her funds from PW to the SIPP. Copies of the latest statements were provided to BW at that meeting, so BW should have been able to see if the funds had been crystallised.
  - It was BW's "professional responsibility" to ensure it had all the required information to complete the transfer.
  - When she submitted her complaint to my Office, she had provided information about the total values of her PW policies, that she had received from PW on the morning of the proposed transfer. However, PW has recently confirmed that the figure given at that time was the best estimate, based on the closing value the night before.
  - Had the request been correctly made on 4 December 2018, the total value that would have been locked in was £212,402.48. This is the amount she believes should have been transferred.

- She provided further information she had received from PW, following the Adjudicator's Opinion, concerning what a receiving scheme needed to complete on the transfer request if the policy was in drawdown, and said:

"Had BW ticked the appropriate boxes then these values would have been locked in. If as they state they believed all funds were crystallised then had they ticked that box they would have locked in the transfer of 99.99% of the funds. Had they ticked all the boxes even the minute amount (less than £100) would also have been transferred. It was their continued maladministration that failed to complete the transaction properly."

- To take three attempts to enter the correct company on Origo and then fail to tick the correct boxes with "such price sensitive consequences" is inexcusable. Even when the transfers were completed in January 2019, the correspondence received from BW referred to the incorrect Phoenix company.
- Although she is grateful for the recommended £500 for the distress and inconvenience, she has experienced, she does not feel this fully represents the extended distress she experienced because of BW's maladministration and its continued denial of any responsibility.
- She provided an alternative timeline (details of which are set out in the Appendix) and said:

"the value to be transferred should have been that relating to when the first transfer request should have been correctly made to PW on 4 December. Had the transfer request been made to PW on 4 December and all the entry details been properly completed on the Origo system the value locked in would have been £212,402.48."

- Her claim is therefore for £3,356.60 which is the difference between the total values of her PW policies at 4 December 2018 and the amount that was transferred to the SIPP in January 2019.

21. As Mrs S did not accept that she did not incur a financial loss because of BW's maladministration, the complaint was passed to me to consider. Mrs S' further comments do not change the outcome. I agree that Mrs S has not incurred a financial loss so will therefore only respond to the main points made by Mrs S.

### **Ombudsman's decision**

22. Having considered the information in relation to this complaint, I agree with the Adjudicator's revised timeline which sets out the events that should have taken place, had there been no maladministration by BW during Mrs S' fund transfer.
23. I appreciate Mrs S' disappointment that the transfer was not correctly requested by BW on 4 December 2018. However, I find that even had BW correctly requested the

transfer from the correct company on that date, PW would have contacted it, as it did, to check whether the uncrystallised funds were also to be transferred.

24. BW was aware that Mrs S' policies were in drawdown but I have seen no evidence that it was made aware, prior to the transfer request, that some of her funds were not crystallised. So, I find it was reasonable for BW to have confirmed with Mrs S, that she also wanted the uncrystallised funds transferred, after it had received the query from PW.
25. I do not find that two working days was an unreasonable length of time for BW to ascertain this information from Mrs S and to then re-submit the transfer request on Origo. The date of 6 December 2018, for when the transfer request would have been made was a reasonable one to use.
26. As the information received from PW shows that the value transferred in January 2019 was more than the value of Mrs S' PW policies at 6 December 2018, she has not incurred a financial loss because of BW's delay.
27. I accept that this situation would have caused Mrs S significant distress and inconvenience and the Adjudicator's recommendation that BW awards Mrs S £500 in this respect is appropriate.
28. I uphold the complaint in part.

## **Directions**

29. Within 21 days of the date of this Determination, Barnett Waddingham LLP shall pay Mrs S £500 for the significant distress and inconvenience she has experienced.

**Anthony Arter**

Pensions Ombudsman  
10 August 2020

## **Appendix**

### **Actual timeline of events:**

- 4 December 2018 – BW requested transfer from Origo.
- 6 December 2018 – Transfer was rejected because requested from incorrect company.
- 10 December 2018 – BW re-requested the transfer from PW.
- 10 December 2018 – PW queried if all funds or just the crystallised funds should be transferred.
- 12 December 2018 – BW contacted Mrs S to query if all funds should be transferred.
- 21 January 2019 – BW requested transfer of Mrs S' funds from PW.
- 25 January 2019 – Transfer from account number 308301 completed.
- 29 January 2019 – Transfer from account number 308300 completed.

### **Adjudicator's timeline:**

- 4 December 2018 – BW requested transfer from PW.
- 4 December 2018 – PW queried if all funds or just the crystallised funds should be transferred.
- 5 December 2018 – BW contacted Mrs S to query if all funds should be transferred. It is likely that Mrs S would have responded on the same date.
- 6 December 2018 – BW re-request the transfer confirming all funds should be transferred.
- 12 December 2018 – Mrs S' transfer completed for account number 308301.
- 18 December 2018 – Mrs S' transfer completed for account number 308300.

### **Mr S' timeline:**

- 4 December 2018 - BW enter details correctly on Origo system to lock in values.
- 5 December 2018 - Possible PW request whether "pre retirement funds" were also to be transferred. This does not affect value of "Drawdown" funds already locked in.
- 14 December 2018 - Funds transferred.