

Ombudsman's Determination

Applicant	Mr N
Scheme	Curtis Banks SIPP (the SIPP)
Respondent	Friends Life (FL)

Outcome

1. Mr N's complaint against FL is partly upheld, but there is a part of the complaint I do not agree with. To put matters right (for the part that is upheld) FL shall establish what units the monetary amount would have bought with Mr N's new provider on 6 July 2015 and compare it to the actual units purchased when the monies were received in Mr N's account on 3 December 2016. If the resultant amount is lower, this additional amount should be sent to Hartley for further investment. Also, FL shall pay Mr N £500 in respect of the significant distress and inconvenience he has suffered as a result of the maladministration.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr N's complaint concerns the delay associated with an in-specie transfer from Friends Life to his new provider, Interactive Investor (**Interactive**).
4. Mr N asserts that Curtis Banks (**CB**) took an exceptional and unreasonable amount of time to complete the transfer and as a result, he was delayed in taking investment opportunities and managing his fund.
5. Mr N also asserts that depending on the time taken for full completion of the transfer to be finalised, he lost between 8% and 10% of the total fund value of his holdings which were £169,477.98 as at 5 April 2015. Mr N would like a payment to cover his losses and an apology for the "totally unacceptable management of the transfer" and the handling of his complaint.

Background information, including submissions from the parties

6. This is a matter of long standing and there have been extensive exchanges between both parties. Whilst I have noted all the information and evidence provided by all parties, I have only referred to the material facts which have led me to my conclusions.
7. There were a number of parties involved in this transfer and I will set out their roles here as the complaint has not been brought against all of them.
 - Ashcourt Rowan was the previous adviser managing the SIPP on Mr N's behalf.
 - Platform Securities held the stock in the SIPP which was being transferred to Interactive (managed by Ashcourt Rowan).
 - Hartley-SAS (**Hartley**) was the administrator for Interactive SIPP.
8. Mr N first requested a transfer of the SIPP to Interactive in December 2014.
9. On 9 January 2015, Hartley sent transfer documentation to FL who responded on 16 January 2015 and asked for its discharge forms to be completed by Mr N. Hartley forwarded this Mr N and the signed discharge form and receiving scheme warranty form were sent to FL on 23 January 2015.
10. On 30 January 2015, FL sent an acknowledgement to Mr N saying it had received the discharge forms and the transfer was being processed.
11. On 2 February 2015, FL sent Ashcourt Rowan a letter requesting information in relation to, among other things, the amount of cash to be transferred and the total value of stock to be transferred in-specie. The letter said:

“We require the following details from you in order to complete our process. **If you do not provide us with these details it will delay the Client's claim.**”

(original emphasis)
12. With effect from 16 March 2015, CB took over the administration of FL's SIPP business. At the time, a 'work in progress' (**WIP**) spreadsheet was sent by FL's previous administrator, Capita. However, the WIP was not formatted in such a way that would allow CB to readily identify urgent cases. CB stated that important cases or those requiring immediate attention had not been flagged and it had to work through each case in order to find the details.
13. On 16 March 2015, Platform Securities chased Capita after being informed by Ashcourt Rowan that it had not received FL's acceptance. The following day, Platform Securities contacted CB and asked for confirmation that it accepted the transfer out.
14. On 19 March 2015, Platform Securities sent a further email to CB and requested an update on the transfer out.

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15. On 11 April 2015, CB asked Hartley to complete its own in-house discharge forms in order to proceed further.
16. On 28 April 2015, Platform Securities asked CB if it had received the forms from Hartley in order to continue with the transfer. CB did not respond.
17. Between 28 April and 8 June 2015, Platform Securities chased CB several times for a response. Mr N complained to CB about the delay. CB informed Mr N that it had not been able to contact Interactive and that it was still awaiting the completion of its discharge forms.
18. On 9 June 2015, CB confirmed to Mr N that it had received the discharge forms from Hartley that same day and that it had spoken to Hartley to ensure “all parties are working towards completing the transfer”.
19. On 19 June 2015, CB received an up to date valuation from Platform Securities. It acknowledged receipt on 22 June 2015 and forwarded the valuation to Interactive and Hartley.
20. On 24 June 2015, Interactive wrote to CB and said it was unable to accept the transfer of the Morgan Stanley stock and asked CB to encash the Morgan Stanley stock.
21. On 30 July 2015, Platform Securities emailed CB and asked if it could trade on 1 July 2015 and settle the transfer on 3 July 2015. CB confirmed that the trade dates were acceptable.
22. The transfer of in-specie elements occurred on 3 July 2015.
23. On 29 July 2015, Interactive emailed CB requesting an update about the Morgan Stanley stock. As Interactive could not accept the stock, it advised that the stock needed to be sold. Interactive asked CB to check the fund and advise on the re-registration process. As there was no response, Interactive sent a further chaser on 17 August 2015. CB informed Interactive on 18 August 2015, that the transfer was being worked on in a different office.
24. Between this time and October 2015, many emails were exchanged between Mr N, CB, Interactive and Ashcourt Rowan in relation to a missing line of stock and the status of the Morgan Stanley stock.
25. CB asked Ashcourt Rowan to sell the Morgan Stanley stock on 20 October 2015, and Ashcourt Rowan replied that it would be sold on 21 October 2015.
26. CB received the final cash balance from the sale on 30 October 2015, but it waited to receive the additional cash in the SIPP account before transferring the total together to Hartley. This was sent on 17 November 2015.

27. After going through the complaint process and being dissatisfied with the outcome, Mr N referred his complaint to The Pensions Advisory Service, then ultimately, to this office.
28. As the transfer began prior to the transfer of FL's SIPP business to CB in March 2015, although Mr N's complaint was brought against CB, F L has assumed responsibility for the complaint.
29. FL's position on Mr N's complaint in relation to the actions of FL and CB is as follows:-
- While it accepts that the transfer took a long time to complete, there is no real evidence that FL/CB caused any significant delay to this process.
 - The initial transfer forms took 17 working days to be issued (between 9 January and 2 February 2015) and this should have taken 10 working days.
 - The in-specie part of the transfer could have been completed by 22 June 2015, seven working days earlier than was actually the case, had there been no delay with issuing the original forms. As a result, FL says it will be prepared to assess any loss of growth between 22 June and 1 July 2015. There would be no change in value as it was an in-specie transfer, so it will only consider growth with the new provider.
 - FL will not use the growth rates from the same funds Mr N's wife achieved following her own unrelated cash transfer. However, it would be prepared to use the performance of the FTSE UL Private Investors Income Total Return Index, "which is the standard approach when investment at an earlier date [cannot] be determined".
 - CB were in a position to send the cash from the sale of the Morgan Stanley stock on 30 October 2015, but this was not sent until 17 November 2015. FL says this should have been sent within two working days of the team receiving confirmation, so this could have been invested earlier, based on this and slightly earlier still, if the initial forms at start of request were issued in 10 working days.
 - Taking into account the same delay of seven working days, in relation to the cash transfer, it could have a different value depending on when it was settled. Assuming the original valuation was around 30 October 2015, and that it was sent within two working days of it being available to transfer, FL say it will calculate what units it would have bought with the new provider and compare to the actual unit purchase from when it was sent in November 2015. If this produces a financial loss, then a monetary amount equal to the loss will be sent to Hartley for further investment.
30. Mr N has made extensive representations about the transfer delay, and the losses he has suffered. In his most recent submission following FL's offer of redress set out above, Mr N made the following comments:-

- FL's timeline of events has ignored what does not suit it. FL has dismissed and minimised the effects of the delay and has tried to imply that it is within normal timescales.
- Mr N points out that FL failed to acknowledge that CB sent further forms for him to complete on 24 March and 5 June 2015, "before the transfer was even commenced, supposedly because earlier ones hadn't been received by FL or lost by CB. Quite clearly this mocks the idea of forms taking 17 days instead of 10."
- Contrary to FL's assertion that the in-specie transfer completed on 1 July 2015, it was not completed until 17 July 2015, as evidenced by his SIPP statement.
- In relation to the cash transfer for the Morgan Stanley stock, Mr N does not accept FL's position that it could have been transferred within two working days of 30 October 2015. The cash from the sale of the Morgan Stanley stock was part of a larger amount transferred, which he did not receive until 3 December 2015.
- Mr N says, "Effectively, 12% of the overall funds transferred until this point, some 11 months from the initial application, and 4.5 months after the completion of the in specie transfers. However, my main concern with the delay was regarding the period between mid-April and the beginning of August when the shares I had selected to buy escalated in value quite quickly."
- Mr N does not accept FL's position that it cannot use the same funds as his wife's ones. He maintains that the funds he would have purchased would have been the same, so the value increase would have been the same. He asserts the means of transfer (ie cash or in-specie) would have no effect on the choice of funds.
- As he had a Power of Attorney in respect of his wife's affairs, the funds he selected for her had been monitored and evaluated by him, specifically for their use, following eight years of virtually no growth with the previous fund managers. Her application to transfer (from a different provider), was made at the same time as his and her funds cleared in February 2015, approximately nine months before his. His cash transfer was the last to be completed and going by his wife's transfer, Mr N asks why his cash transfer was also not completed in February.
- It is evident that FL do not want to use the growth rates of the funds he selected because they were quite significant. However, Mr N maintains that these were the growth rates that he lost out on.
- As he reached retirement age in 2015, he intended to work for another two to three years as he was seeking to grow his pension as much as possible within that time. Consequently, the loss of access to his fund for nearly one year is costlier than if he had been a younger man.
- Mr N asserts that according to pension industry estimates and guidelines, his pension fund should have transferred within two to three months. Had this happened, he would have been able to purchase his fund selection by the end of

March 2015, well before the rise in fund values. FL/CB were the only ones with the ability to transfer the funds on time or late. He asserts that “the idea they are only responsible for a few days losses is again nothing less than an attempt to avoid their responsibility and liability for the full losses” he incurred.

- Mr N believes that FL overlooked his transfer out request in January, possibly as a result of an increased workload associated with the transfer of business to CB. CB was “probably overwhelmed with the new business documentation and organisation, and consequently sought to buy time by palming customers off with assurances and delaying tactics. When required to locate completed forms for actioning [it] took the simplest option of sending out new ones.” Mr N says that this explains why he had to complete three sets of forms and the transfer out did not commence until some time after 8 June 2015.

Adjudicator’s Opinion

31. Mr N’s complaint was considered by one of our Adjudicators who concluded that further action was required by FL. The Adjudicator’s findings are summarised below:-

- There is no dispute that Mr N requested a transfer, completed discharge forms and received an acknowledgement from FL in January 2015.
- FL sent an instruction to Ashcourt Rowan on 2 February 2015. It asked for specific information and said the information was needed to complete its processing of Mr N’s transfer. There is no evidence that FL did not send this letter but Ashcourt Rowan did not respond to it.
- As the information was still outstanding by the time the transfer of business to CB occurred on 16 March 2015, the Adjudicator did not consider that this period of time can be attributed to a failing by FL.
- In relation to the requirement for Mr N to complete more than one set of forms, the Adjudicator opined that it was not unreasonable for CB to have requested its own discharge papers to be signed. The discharge form was sent to Hartley for completion in April and after completing the receiving scheme declaration on 7 May 2015, Hartley sent this to Mr N for completion. Mr N did not complete his section of the form until 6 June 2015, and it was not received by CB until 9 June 2015. In view of this, the Adjudicator did not consider that the delay that occurred over this period can be attributed to CB. CB could have been more proactive by chasing the relevant parties and although it was not obliged to do so, it would have represented best practice considering that by that point, CB would have known when the original request had been lodged.
- Legislation governing a member’s right to transfer their accrued pension benefits states that trustees and scheme managers must do what is “necessary to carry out what the member requires”. In relation to Mr N’s transfer of his SIPP which is a

money purchase arrangement, scheme managers must ensure that the transfer is completed within six months.

- The Adjudicator considered that the time started running from 9 June 2015, when CB received the completed discharge forms.
 - FL asserted that the in-specie transfer could have been completed on 22 June 2015, after accounting for a delay of seven working days. Based on the information available, the Adjudicator did not consider that redress is required for the period between 23 June 2015, and the eventual date that the in-specie transfer completed. This is due to the outstanding information that had initially been requested on 2 February 2015, and not received until June 2015.
 - In relation to the cash element of Mr N's transfer, the Adjudicator considered that CB was aware from 24 June 2015, that Interactive could not accept one line of stock and that it would need to be sold and transferred as cash. The Adjudicator concluded that there was no evidence to show that CB instructed Ashcourt Rowan to sell the stock until 20 October 2015. While this is still within the six-month period allowed for transfers, the Adjudicator did not consider that there was a valid reason why the instruction was not given sooner, and the stock sold earlier.
 - From 20 October 2015 to 30 October 2015, when CB was in a position to send the monies from the sale to Hartley, there are eight working days. Applying this same timeframe from 24 June 2015, the Adjudicator concluded that the cash transfer should have been completed and the proceeds sent to Hartley by Monday 6 August 2015. As this did not occur, the Adjudicator considered that this amounted maladministration. The Adjudicator agreed with FL's offer of redress in relation to the cash transfer and recommended it undertake that same calculation to establish what units the cash would have bought with the new provider and compare it to the actual units purchased when the cash was received in Mr N's account on 3 December 2016. If the resultant amount is lower, this amount should be sent to Hartley for further investment.
 - Overall, the Adjudicator was not able to conclude that CB was wholly responsible for the time it took the transfer to complete.
32. FL accepted the majority of the Adjudicator's Opinion. However, in relation to the Morgan Stanley line of stock, it does not accept that the assumed completion date should be 6 August 2015, and it has provided its further comments.
33. Mr N did not accept the Adjudicator's Opinion. He has also provided his further comments and the complaint was passed to me to consider. The additional further comments do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by FL and Mr N for completeness.

Ombudsman's decision

34. FL asserts that it did not receive evidence of Mr N confirming that the transfer should go ahead until it was completed on 30 October 2015. As a result, FL does not consider it reasonable to assume that it caused the delays to the cash transfer. Its position is that this could not be completed until it received confirmation that Mr N wanted to go ahead with it. FL maintains that the assumption of the cash transfer completing on 2 November 2015 is a reasonable one, based on the fact that it did not have prior confirmation to proceed. FL asserts that Hartley was dealing with this aspect of the transfer, so it was outside its control.
35. Mr N made the following points in response to the Adjudicator's Opinion:-
- The transfer took a year to complete through no fault or delay on his part. He refutes the implication that he "sat on discharge paperwork from 7th May to 6th June" and says the implication is "absolutely ridiculous".
 - Mr N asserts that at the time, he was chasing the transfer "quite actively and would have returned this within 24 [hours] of receipt". Mr N asks why CB did not ask him to return anything during those chasing calls or emails. Mr N also restates that he completed the original FL forms at the outset and these were acknowledged. He asserts that he does not have to tell his bank twice to make a payment, but this was not the same with CB. Mr N says this was necessary here due to the "poor, haphazard way" that FL/CB undertook the transfer of business. Both should have ensured under their joint duty of care, that customers were not inconvenienced and not "treated as a consequence".
 - Mr N does not agree that the time it took the Morgan Stanley stock to transfer was satisfactory. Having sought advice from other independent experts, the overall conclusion was that it could have been completed "within as short a time as 7 days had there been the will to do so".
 - Mr N has said the initial advice he received was that the transfer would take two to three months. Therefore, he questions where the deadline of six months has emerged from.
 - Mr N maintains that the "delays in the handling of this transfer were unreasonable, avoidable, and handled with no care, respect or regard" for him, the customer.
 - Mr N believes the complaint could have been dealt with in a fraction of the time had CB and FL not been favoured with unlimited timescales to respond to this organisation's requests for information.
 - Mr N has also questioned why when a complaint is referred to me, responsibility for losses and the calculation of such passed to the pension provider to decide.

36. Based on the information available, I agree with the Adjudicator that the sale of the Morgan Stanley stock should have been completed sooner. CB was aware that it needed to be sold as Interactive made this clear on 24 June 2015. After informing Platform Securities on 26 June 2015 that Interactive could not hold one line of stock, it should have been clear what action needed to take place. There are subsequent emails between CB and all the other parties over the course of the following months, which show knowledge of the necessity of a sale, but no action being taken. From the available evidence, it was CB who instructed Rowan Ashcroft to sell the final line of stock on 20 October 2015, so I am unable to conclude that it was indeed waiting for confirmation that the stock should be sold.
37. I do not dispute Mr N's assertions about similar transfers taking much less time to complete. While Mr N was given an initial indication that the transfer may take two to three months to complete, I do not find that this amounts to a guarantee. There are numerous factors that could come into play and have the overall effect of lengthening the time taken for the transfer to complete. Any timeframe can only commence when all the requirements have been met.
38. Mr N wondered why there was reference to six months in respect of the time allowed for a transfer. Six months is stipulated by Section 99 (2) Pensions Schemes Act 1993, as amended, as the period within which a transfer from a money purchase arrangement should be completed. However, in straightforward cases I would expect such transfers to be made in a much shorter timescale.
39. Looking at the events in this case, I consider that there were avoidable delays, but I agree with the Adjudicator that the delays were not caused solely by CB. While CB could have been more proactive, there were periods of time when it was waiting for information that was outside of its control.
40. It is not unreasonable for Mr N to believe that his complaint to me could have been dealt with much sooner. In seeking to investigate his complaint, we need to make our own enquiries and further information needed to be gathered. I understand that it can be frustrating waiting for a response, but all parties have to be allowed to respond to our enquiries. The impartial nature of my role requires this so that the facts of the case can be established. I do not consider that a finding against FL is required in this regard.
41. As I agree with the Adjudicator that further action is required by FL, it is not unusual for me to direct that a respondent such as FL, take a specific course of action to remedy a finding of maladministration. In response to Mr N's query on this, my role is to set out the basis for the remedy, not to carry out the actual calculation or implementation of that remedy. This is because among other things, I do not provide actuarial or investment services and the responsibility for undertaking the relevant calculations does not rest with me.
42. Having considered the events that occurred on this case, I uphold Mr N's complaint in part for the delay that occurred with the selling of the Morgan Stanley stock.

Directions

43. Within 21 days of the date of this Determination:

- (i) FL shall establish what units the monetary sum would have bought with Mr N's new provider on 6 July 2015, and compare it to the actual units purchased when the monies were received in Mr N's account on 3 December 2016. If the resultant amount is lower, this additional amount should be sent to Hartley forthwith for further investment; and
- (ii) FL shall pay Mr N £500 in respect of the significant distress and inconvenience which he has suffered.

Anthony Arter

Pensions Ombudsman
14 December 2018