

## Ombudsman's Determination

Applicant	Mr Y
Scheme	London Victoria ( <b>LV</b> ) Self Invested Personal Pension ( <b>SIPP</b> )
Respondent	LV Retirement Solutions ( <b>LVR</b> )

## Outcome

1. I do not uphold Mr Y's complaint and no further action is required by LVR.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. The complaint concerns a request to transfer Canada Life funds held within an LV SIPP. Although the funds should never have been transferred as the exit penalties made the transfer unsuitable, Mr Y wants compensation for the delay in making the transfer. Mr Y has said that if the transfer was made sooner the error would have been discovered and the correct funds applied more quickly.

## Background information, including submissions from the parties

4. Mr Y met with a new Independent Financial Advisor (**IFA**) in September 2013. Within the SIPP, Mr Y held two investment funds.
  - Fund 1 - held in a Threadneedle 6 money market fund and valued at £3,110
  - Fund 2 - a Canada Life investment and valued at £119,240 also in a money market fund.
  - A further £2,117.73 was held in a cash bank account.
5. Mr S, the IFA, who is acting on behalf of Mr Y as his personal representative said he recommended to Mr Y that he transfer the Canada Life investment out of cash. The first contact with LV in October 2013 was a request to obtain information regarding LV Insured medium risk funds; this email referred to the Canada Life fund being in cash.
6. The instruction given to LV on 9 April 2014 was:

"Subject: Re: Mr Y – policy 07.....A

Please can you switch the above clients fund into the following:

50% Threadneedle Managed Portfolio 5

25% 7IM Moderately Adventurous

25% Vanguard Life Strategy 60 % Equity

Please let me know if you need anything else?"

7. LV took this instruction as a request to "switch" from the £3,110 in the LV Threadneedle money market fund to the new LV Insured funds. The IFA has since said the intention was to arrange for only the Canada Life funds (£119,240) to be transferred.
8. On 4 July 2014, the IFA checked the LV pension arrangement and sent an email to say his clients account still showed him invested in the Cash Fund. The IFA did not clarify if it was the Canada Life fund.
9. LV confirmed that the transfer went through correctly to the funds requested. LV continued to believe that the switch was required from the LV Insured Threadneedle fund, not the Canada Life fund.
10. From September 2014 to December 2014 a number of emails were sent from the IFA and LV trying to establish what had occurred. There were also discrepancies over fund valuations, incorrect or inadequate documentation being issued to Mr Y, and questions concerning the income and charges being taken from the Canada Life funds. LV were trying to obtain information from Canada Life with regard to these discrepancies.
11. When the Canada Life transfer took place on 5 December 2014 an exit penalty of £5,532.66 was applied. On discovering the exit penalty it was agreed by all parties to transfer the funds back to Canada Life; this was completed on 5 January 2015. Canada Life agreed to reinstate the Cash Fund investment without cost, as long as the investment stayed with Canada Life, as Mr Y and the IFA had said they were not aware of the exit penalty. The IFA has stated that he was then to arrange with Canada Life appropriate medium risk funds that would stay invested with Canada Life, and would therefore not attract an exit penalty.
12. When the funds were returned to Canada Life on 5 January 2015 the IFA did not instruct Canada Life to move out of the Cash Fund until July 2015.
13. The IFA has said that the instruction asking to switch on 9 April 2014 was intended for the Canada Life fund only, and not the LV Threadneedle fund that was transferred. Mr Y has asked to be compensated for the loss of investment return whilst the investment remained in cash until July 2015.
14. LV have said that the instruction to "switch" on 9 April 2014 was not an instruction to "surrender and transfer" the Canada Life investment to LV. Because of this, LV

believe that they carried out the correct instruction to “switch” the LV Insured fund to other LV Insured funds.

15. LV accept that during the period from September 2014 to December 2014 they could have been more proactive, and that delays did occur in establishing the fund switch that was requested in April 2014 was not intended. Because of this LV originally offered £350 as compensation for the distress and inconvenience caused; this was later increased to £500 and rejected by Mr Y.

### **Adjudicator’s Opinion**

16. Mr Y’s complaint was considered by one of our Adjudicators who concluded that no further action was required by LV. The Adjudicators findings are summarised below:-
- LV are only providers of the SIPP vehicle itself; they are not responsible for understanding if exit penalties or charges would apply on any investment funds held in the SIPP.
  - The 9 April 2014 instruction to LV was unclear. It did not clarify that the intended funds to be transferred were the Canada Life funds and not LV funds. The instruction should stand alone in being clear and should not rely on previous emails. Because of this LV cannot be held responsible for the unclear transfer instruction.
  - LV cannot be held responsible for the funds remaining in cash from January 2015 to July 2015 after the transfer was reversed. The funds were available to be transferred from cash to another fund any time from 5 January 2015 if they remained with Canada Life.
  - The instruction of April 2014 stated “switch” and “fund”. It did not say “surrender” or “disinvest”, and because of this, the instruction appears more likely to refer to the LV Insured cash fund and that it should be switched to other LV Insured funds.
  - The £500 offered to Mr Y before the case came to The Pensions Ombudsman, for distress and inconvenience was considered fair under the circumstances.
17. Mr Y did not accept the Adjudicator’s views and the following was submitted by Mr Y’s representative:-
- The original email sent to LV in October 2013 specifically mentioned the Canada Life Fund, and the Adjudicator did not take this into consideration.
  - Mr S disagreed with the Adjudicator’s Opinion that to “switch” was more likely to indicate an internal movement from one fund to another. Mr S has said that the words “switch and “transfer” are interchangeable.

- Various emails from September 2014 identified that it was the Canada Life fund that should have been transferred to LV. If the transfer had taken place then it could have been rectified and corrected in a timely manner.
  - The funds were not transferred from the Canada Life fund from early January to July 2015 as a complaint was outstanding.
18. As Mr Y did not accept the Adjudicator's Opinion, the complaint was passed to me to consider. Mr S provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr S for completeness.

### **Ombudsman's decision**

19. The initial email that mentions the Canada Life Fund was sent by Mr S in October 2013. The fund switch request email, which is the subject of the complaint, was on a separate email chain and dated 9 April 2014. Canada Life was not mentioned at any point in the email chain that includes the request of 9 April 2014. Therefore, I do not consider the October 2013 email to be relevant in relation to the switch request that was requested six months later.
20. In the context of pension's terminology, the word "switch", in relation to moving one fund to another, is usually used to indicate an internal move within the same provider. A transfer would usually indicate transferring from one provider to another. The 9 April 2014 email did not indicate the surrender of a non LV fund. The request of 9 April 2014, would therefore be more likely to indicate a switch from one LV investment fund to another, not a transfer.
21. The email of 1 September 2014 does clarify the Canada Life funds were the intended funds that were to be transferred. I agree that the time taken between the September emails and the transfer taking effect on 5 December 2014 does appear to be outside of normal timescales to initiate a transfer. However, this transfer was almost immediately reversed as the transfer itself was a mistake, as unknown exit fees applied. These funds then remained in the Canada Life Cash Fund for a further six months. Because of this I cannot direct LV to compensate Mr Y for any potential loss of growth for any delay between September and 5 December 2014 when no action was taken by either Mr Y, or his IFA to invest the funds out of cash after the transfer was reversed.
22. LV offered Mr Y £500 in recognition for the distress and inconvenience suffered. LV said that from 1 September 2014 until the transfer was made on 5 December 2014, they could have acted more quickly to clarify the original investment instruction, and deal with the other queries. That offer is reasonable in recognition of the non-financial injustice, and I am making no further award.

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23. Therefore, I do not uphold Mr Y's complaint.

**Karen Johnston**

Deputy Pensions Ombudsman  
26 May 2017