

Ombudsman's Determination

Applicant	Mr K
Scheme	Interactive Investor SIPP (the SIPP)
Respondents	Interactive Investor (Interactive) The Lifetime SIPP Company (Lifetime)

Outcome

1. Mr K's complaint is upheld and, to put matters right, Interactive shall (1) waive or reimburse any costs associated with selling investments in the SIPP, (2) credit the disputed contribution back to the employer's bank account, (3) credit to the same account, a sum equal to the interest the disputed contribution would have earned had it been cancelled and returned, and (4) pay Mr K £500 in respect of the significant distress and inconvenience this matter has caused.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr K's complaint about Interactive, the investment manager, and Lifetime, the administrator, is that they incorrectly applied a contribution for £50,000 to the SIPP, despite assuring him it would be cancelled.

Background information, including submissions from the parties

4. Originally, Mr K took out the SIPP with Interactive.
5. In February 2017, Mr K sent Interactive a completed contribution form and cheque for a £50,000 employer contribution to the SIPP. On 1 March, Interactive received the form and cheque.
6. On 9 March 2017, Mr K said the cheque had not been cashed, as he was able to view the employer's bank account and the money was still there. He contacted Interactive and said: -

"...I note that the cheque has not been cashed and, having reviewed the issue, I wish to cancel the contribution. Please ignore and destroy the contribution form and cheque provided for payment."

7. On the same day, Interactive says the employer contribution “due diligence checks” were completed and the cheque was “banked”.
8. On 10 March 2017, Interactive responded to Mr K and said: -

“I am extremely sorry to learn you wish to cancel the contribution, and apologise for any inconvenience caused at all. I have updated our SIPP Administrators accordingly following receipt of your message, and trust they will cancel this as soon as possible...”
9. On 13 March 2017, the deadline passed for cancelling the cheque at Mr K’s bank.
10. On 26 March 2017, Mr K discovered that the £50,000 contribution had been debited from his employer’s account on 13 March 2017. He contacted Interactive and said: -

“...To my astonishment upon returning from holiday and checking the company bank account I see that you have cashed the cheque AFTER I expressly requested you cancel the contribution... You have done the opposite to my request and taken £50,000 funds from my employer when you assured me that you would not do so... The end of the tax year is upon us and I urge you to immediately transfer out funds to [the] account...”
11. On 29 March 2017, after investigating his complaint, Interactive responded to Mr K and said: -

“We received a secured message from you on the evening of 9 March 2017 asking for the contribution to be cancelled and this instruction was passed to our SIPP administrators on 10 March 2017. As your cheque had already been banked the day before, this is why your contribution had not been cancelled. Please accept my apologies for any inconvenience that this may have caused.

On the basis of my findings I am unable to uphold your complaint. It is unfortunate that your request to cancel your contribution came after our SIPP administrators banked your cheque however, as discussed we are able to return this to you.”
12. On 31 March 2017, Interactive contacted Mr K and said: -

“After consulting with our SIPP administrators, they have advised that they are unfortunately, unable to issue any refund to you. Please accept my apologies for any inconvenience that this may cause... They have advised that the reason provided for the refund does not fall into the acceptable category set out by HMRC. I am sorry that we advised you that you could obtain a refund. We were provided with incorrect information from our SIPP administrators.”
13. On 4 April 2017, Mr K emailed Interactive and said: -

“...This is not a refund because it has never been credited to my account. It is a cheque that was inadvertently cashed by yourselves when the contribution

was cancelled... Please transfer the money from your account bank top [sic] my employer or give some concrete explanation as to why [Interactive] refuse to release the funds from your bank account when they have never touched my SIPP account.”

14. On 5 April 2017, the £50,000 contribution was applied to the SIPP.

15. On 7 April 2017, Mr K emailed Interactive and said: -

“I notice that today you have credited my SIPP account with the cancelled contribution against my explicit instructions... Contrary to your assurances however, [Interactive]... proceeded to process the contribution, the funds taken from the source account on 13th March. If [Interactive] had told me the truth on 10th March that the contribution was to be processed then I would have contacted the bank and put a stop on the cheque... I have suffered a significant financial loss as a direct result of your misrepresentation. This is now a final opportunity for you to reverse the contribution...”

16. On the same day, Interactive emailed Mr K and said: -

“I am sorry that you were previously advised that you could obtain a refund of your 50,000 GBP contribution. As per my previous messages, this was originally thought to be possible however, we were provided with incorrect information... I am sorry that we are unable to fulfil your refund request and for any inconvenience that this may have caused. Your complaint has been escalated to our Complaints Team who will review and provide you with their response once complete.”

17. On 4 May 2017, Interactive emailed Mr K and said that, after speaking with its administrators, the reason he had given for wanting a refund was unacceptable. In its view, this was an “HMRC ruling”, so there was nothing further it could add.

18. Mr K said Interactive had avoided the main issue. Until 13 March 2017, it was still possible for the cheque to be stopped. As Interactive had incorrectly told him the contribution could be returned, he had lost the opportunity to stop it himself. This “deception” was the key point of his complaint.

19. On 4 May 2017, Mr K contacted this Office by phone. He selected Opinion 1 and was put through to the Pensions Advisory Service (**TPAS**). A recorded message informed him, “Thank you for calling the Pensions Advisory Service” and Mr K was put through to a TPAS representative. It was suggested that he approach HMRC for its comments on whether anything could be done to avoid the annual allowance tax charge that would result from non-cancellation of the contribution. He was also told to consult his accountant in relation to this matter.

20. Later, HMRC emailed Mr K's accountant and said the matter should be determined by the scheme administrator in line with HMRC's published guidance.
21. Mr K's accountant queried this but HMRC said it did not get involved in disputes between scheme administrators and members.
22. In September 2017, Mr K referred his complaint to this Office.

Adjudicator's Opinion

23. Mr K's complaint was considered by one of our Adjudicators, who concluded that further action was required by Interactive, which is responsible for its own acts and omissions, as well as Lifetime's. The Adjudicator's findings are summarised briefly below: -
 - Whilst Interactive did not think its email of 10 March 2017 was explicit, the Adjudicator disagreed; he said it was reasonable for Mr K to assume that he had done everything he needed to do, and that the contribution would be cancelled.
 - The Adjudicator thought Interactive's email was the key point of the complaint. He said if Interactive had correctly informed Mr K, on 9 March, it could not guarantee that the contribution would be cancelled, Mr K would have stopped the cheque himself.
 - Had he stopped the cheque, he would not have become liable for a tax charge.
 - In addition, Mr K had experienced significant distress and inconvenience as a result of this matter, because he had to make a complaint, and because the contribution had been applied to the SIPP after he had expressly asked for it to be cancelled.
 - To resolve the complaint, Interactive should do one of two things. It should either (A) liaise with Lifetime and HMRC to refund the £50,000 contribution. If no tax charge would be applied to it, Interactive should pay Mr K a sum equal to the interest it could have earned had it not been applied to the SIPP, with the rate of interest being the base rate for the time being quoted by the reference banks.
 - Or, Interactive should (B) pay Mr K a sum equal to any annual allowance tax charge associated with the contribution. In which case, no interest would be payable, as Mr K would have the benefit of any return on investment associated with the contribution.
 - In either case, Interactive should also pay Mr K £500 in recognition of the significant distress and inconvenience this administrative error had caused him.
 - But Mr K was not entitled to reimbursement of his accountant's fees, since Interactive correctly informed Mr K that he could refer his complaint to TPAS, and TPAS would have assisted him at no cost.

24. On 27 March 2018, Interactive said it would not contest the Adjudicator's Opinion; it then agreed to settle the complaint in line with Option A as explained in paragraph 23 above.
25. On 28 March 2018, Mr K disagreed with the Adjudicator's Opinion on two points. He said his accountant's fees should be reimbursed, because the Pensions Ombudsman advised him it would not accept any complaint until his accountant had exhausted all enquiries with HMRC, so that he could be certain what loss to claim.
26. He also said: -

"I am, however, grateful for your office's otherwise fair handling of this complaint and I accept your decision and do not intend to contest it. If, however, [Interactive] choose to challenge your decision then I reserve my right to ask the ombudsman to reconsider the refusal the compensate my accountants [sic] fees."
27. He said he had left the £50,000 contribution sitting as cash in his SIPP account for as long as possible in the hope it would be returned, but in January 2018 he was obliged to declare the contribution to HMRC. He then purchased investments and incurred stamp duty and dealing charges which he would not otherwise have incurred. He considered that these should also be returned.
28. Over the following months, Interactive liaised with HMRC to ascertain whether the contribution could be designated a genuine error.
29. On 27 July 2017, Interactive contacted the Adjudicator and said its new administrator had received confirmation from HMRC that no tax charge would be applied in relation to the contribution. It also said its administrator would arrange to refund the contribution.
30. Mr K agreed to sell some investments in the SIPP, to realise the £50,000 cash to return the contribution to the employer's bank account. Interactive agreed to waive any costs associated with selling the investments. It also agreed to pay Mr K £500 for distress and inconvenience.
31. On 30 July 2018, Mr K said there were three outstanding items. First, the transaction fees should be refunded. Second, the £500 should be credited to his bank account. And third, the £50,000 contribution should be transferred back to his employer's bank account. Once this was complete, he would accept the Adjudicator's Opinion and the complaint could be closed.
32. In the meantime, Mr K had made a Subject Access Request (**SAR**) to this Office. As part of the SAR, he received a recording of the phone call with TPAS. He said that it proved he was told to speak with HMRC, if necessary with the help of his accountant, about whether the tax charge could be avoided. He therefore did not accept the Opinion in respect of his accountant's fees. He said the telephone call of 4 May 2017

showed he would not have incurred these costs but for the advice he received. So, the case was passed to me to consider.

Ombudsman's decision

33. I agree with the Adjudicator's Opinion and will therefore only respond to the key points made by Mr K for completeness.
34. I agree that Interactive made an administrative error on 10 March 2017. It gave Mr K unclear and incomplete information; if it had properly informed him that it could not guarantee cancellation of the contribution, Mr K would have stopped the cheque, no money would ever have reached the SIPP and no transaction charges would have been incurred. I consider that Mr K's decision to invest was a reasonable response to Interactive's insistence that they could not reverse the contribution and the investment costs incurred flowed directly from the original maladministration.. .
35. So far as accountant's fees are concerned, I have seen no evidence that Interactive required Mr K to seek the advice. Interactive have also liaised with HMRC directly to ascertain whether the tax charge is reversible. I therefore see no basis to hold Interactive responsible for any accountancy fees referable to resolving that issue. To the extent that Mr K considers he has a complaint about information which he was given by this office, that is a matter which will be dealt with by way of service complaint and is outside the scope of the issues which I can determine as part of the complaint against Interactive.
36. Therefore, I uphold Mr K's complaint and make the following direction to remedy the injustice.

Directions

37. On the basis that HMRC has confirmed that no annual allowance tax charge need be applied in respect of the contribution - and that a Scheme Pays deduction in respect of the contribution has now been reversed - I direct that Interactive should complete the following actions within 28 days:-
38. Waive or reimburse any transaction costs associated with the investments Mr K sold (or will sell) to raise the £50,000 cash, so that the same can be returned to the employer's bank account.
39. Credit the £50,000 contribution back to the employer's bank account.
40. Credit to the employer's bank account, a sum equal to the interest the £50,000 would have earned, had it not been applied to the SIPP but had instead been returned to the employer's bank within ten working days following Mr K's email of 9 March 2017. The rate of interest applied should be the base rate for the time being quoted by the reference banks, and the basis should be simple.

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41. Credit to Mr K's bank account, £500 in respect of the significant distress and inconvenience caused this matter has caused him.

Karen Johnston

Deputy Pensions Ombudsman
15 October 2018