

Ombudsman's Determination

Applicant	Mr Roger Morton
Scheme	Alliance Trust Full SIPP (the SIPP)
Respondent	Alliance Trust Savings Limited (Alliance) Curtis Banks Plc (Curtis Banks)

Complaint summary

Mr Morton's complaint against Alliance and Curtis Banks is that he has suffered a financial loss as a result of their failings with regard to the transfer of funds.

Summary of the Ombudsman's determination and reasons

The complaint should not be upheld against Alliance because they were not involved in the sale of the Marlborough holding or the purchasing of iShares.

The complaint should be upheld against Curtis Banks because there were delays on their part in the sale of the Marlborough holding and the purchase of iShares.

DETAILED DETERMINATION

Material Facts

1. In 2010 Mr Morton set up the SIPP with Alliance.
2. Page 5 of Alliance's Full SIPP handbook, under the heading 'What investment options do I have within the Full SIPP?' says:

"There are no restrictions in principle (beyond those imposed by HM Revenue & Customs) on the investments that may be held within the Full SIPP. Your pension fund can, therefore, be invested in a wide range of investments, including:

 - stocks and shares, both quoted and unquoted
 - open-ended funds
 - insurance company funds
 - commercial property
 - loans to unconnected parties, and
 - cash deposits.

You can manage your pension fund yourself or use an online share dealing service or fund supermarket of your choice. Alternatively, if you prefer, we will appoint a stockbroker or an authorised fund manager of your choice to manage your pension fund.

We will accept investment instructions from you and from any adviser that you have authorised for this purpose."
3. On 10 January 2013 Mr Morton received a letter from Alliance enclosing a circular from Marlborough Fund Management Ltd (**Marlborough**), dated 24 December 2012, announcing the closure and liquidation of the Marlborough Ethical Fund (**Marlborough Fund**). Options were set out and it was stated that dealings would cease after 30 January 2013.
4. On 18 January 2013 Curtis Banks acquired Alliance's Full SIPP business.
5. On 23 January 2013 at 5.07pm Mr Morton sent an email to Curtis Banks asking them to cash his entire holding of the Marlborough Fund at the earliest opportunity.
6. Curtis Banks' service level standards states that purchase/sale forms for quoted investments will be processed on the "same day".

7. On 28 January 2013 Mr Morton had a telephone conversation with Ms C of Curtis Banks about the process for giving reinvestment instructions. She sent him by email a Standard Investment Instruction Form (the **Instruction Form**) which he completed and returned immediately. He says that in the course of the exchange of emails Ms C said: "I can confirm that we will happily action paperwork but cannot actually action the investment until the monies have been received into [his SIPP bank account]"
8. The Instruction Form Mr Morton completed on 28 January 2013 showed that the proceeds from the sale of the Marlborough Fund were to be reinvested in iShares FTSE250 ETF (**iShares**).
9. "iShares" are a brand of exchange-traded funds (**ETFs**) that track a different stock market index or bond. They have existed since the 1990s. Curtis Banks' brochure on their website for their SIPP shows that investments can be made in ETFs.
10. On 31 January Mr Morton telephoned Ms C at Curtis Banks for an update on the sale of the Marlborough Fund holding and was informed that money from the sale was not as yet in his SIPP bank account. He said that he telephoned Mr B, an administrator at Curtis Banks, who informed him that they were in the process of creating instructions to selling the holdings in the Marlborough Fund which had to be signed by two trustees. The noon deadline was missed and the Marlborough Fund was liquidated.
11. On 7 February 2013 Mr Morton received a telephone call from Mr B advising him that a payment of £116,886.72 had been made into the SIPP bank account in respect of the proceeds from the sale of the holding in the Marlborough Fund and further small sums would follow on or before 31 March 2013.
12. Mr Morton says that he asked Mr B about the reinvestment of the proceeds of the sale of the Marlborough holding and Mr B did not realise that instructions had already been given for this. Mr Morton says that he warned Mr B that he would be looking to Curtis Banks to make good any shortfall as a result of any delay, including loss of any dividends on the iShares.

13. On 9 February 2013 Mr Morton sent an email to Mr B stating that if the Marlborough holding had been sold on 25 January 2013, the total proceeds would have been £118,886.04 (ie 124,840.96 shares at a share price of 95.23p). This would have secured 9,286 iShares at 31 January 2013 (based on a share price of £12.8015). In addition he would have received a quarterly dividend.
14. Mr B responded by email on 11 February stating that he had passed on the query to his manager to look into the matter further. He added that the investment into iShares had not been made because none of the existing SIPP members held this investment in their SIPP and they had to assess the investment and do the necessary diligence checks.
15. On 21 February 2013, Mr Morton completed a 'Statement of Overall Assets' and a 'Non Standard Investment Questionnaire'. Mr Morton says that he emailed these forms to Mr B on the same day.
16. Mr B emailed Mr Morton on 6 March 2013 stating that the pensions technical department were happy for the investment in iShares to proceed.
17. Mr Morton says that he contacted iShares on 6 March 2013 enquiring about investment in their funds. He was informed that investments could only be made through dealing platforms or a stockbroker. As he did not hold a stockbroking account and his SIPP did not have a dealing platform, he could not invest in their funds. He says that in view of the potential significant further delay in getting a stockbroker or other intermediary approved by Curtis Banks, he decided to immediately move to a Select SIPP with Alliance (the **Select SIPP**).
18. On 12 March 2013, after he had received confirmation that the monies from the SIPP had been transferred to the Select SIPP, he purchased 8,489 iShares at a share price of £13.74. A further 97 iShares were purchased on 11 April 2013 as a result of a payment of £1,332.55 from income arising during the liquidation of Marlborough.
19. On 29 May 2013 Mr Morton complained to Curtis Banks that he had 8,586 shares in iShares compared with 9,286 shares he would have had had the shares been bought on 31 January. In addition he had lost a distribution of 5.31p per share paid

in February on the entire holding and one of 11.94p with a XD date of 29 May on the deficiency of 700 shares, amounting altogether to £576. He attached a chronological account of his complaint.

20. On 12 July 2013 Curtis Banks responded to Mr Morton saying that his complaint related to two instructions he had given in relation to his SIPP: one to sell the Marlborough holding; and the other to purchase an iShares holding. In respect of the Marlborough instruction, they took three days to action it. Although this was not an excessive delay, it was outside their agreed service levels. They apologised for the delay but did not believe that it had caused him material detriment. In respect of the iShares it took them five days to action the investment when their agreed service allowed them 48 hours to action such a request. They apologised for the delay but said that the iShares could not be held within a SIPP. They said that as a SIPP member it was his responsibility to carry out the relevant research as to what was and what was not an eligible holding. Therefore they did not consider any loss of investment opportunity was their fault. They offered him £100 as a gesture of good will for the inconvenience and stress the delays had caused.
21. Mr Morton wrote to Curtis Banks on 17 July 2013 stating:
 - He had sent instructions with regard to the Marlborough Fund at 17.07 on 23 January 2013 which was acknowledged by Curtis Banks at 10.08 on 24 January. With the cut off time for dealing of noon, the first day on which they could have been implemented was 24 January. They had still not been implemented at noon on 31 January, which is a six day and not a three day delay.
 - Eligibility in investing in iShares is confirmed by their own website, ie the list of permitted investments in a SIPP, under the 11th bullet point which refers to “Hedge funds”, exchange traded funds and restricted contracts for difference”. They would in any case be eligible under the second bullet point as “Shares in companies listed on the main London Stock Exchange...”. He had carried out the relevant research with the help of Curtis Banks’ website and got the right answer. Curtis Banks eventually agreed with him, though only after an extraordinary delay which revealed an unacceptable ignorance

of what they were looking for. He asked for confirmation that the iShares were eligible to be held in a SIPP all along, as confirmed by their website and eventually by their investment team.

- His original instruction to reinvest the Marlborough proceeds in the iShares was given on 28 January. It was not until late on the afternoon of 5 March 2013 that this was cleared by Curtis Banks. Their service standard for dealing with sales and purchases of listed investments is “same day”, but even if 48 hours is accepted this still leaves 19 days and not the five days referred to.
- He had set out in his calculations to show that 700 fewer iShares had been bought than would have been had his instructions been carried out timeously. At the price current when he was writing this equated to just over £10,000.

22. Curtis Banks responded to Mr Morton as follows:

- They did not have a formal service standard in place for implementing investment instructions, so they were not sure what service standard he was quoting when he said “same day”. They usually carry out an action within 48 hours of receiving it, but on this occasion they did take longer and apologised for the delay.
- As a plan holder of a SIPP, it was his responsibility to assess the eligibility of any potential investment before instructing them to proceed. They had carried out the necessary checks on the investment, which did not raise any restrictions in respect of the suitability of the investment. They therefore executed his instructions in good faith and progressed the investment on his behalf from the end of January through to February. Until 5 March 2013, iShares had informed them that the only way to hold the product was on a platform and it was therefore not compatible with their SIPP. This was not a restriction on their part and he should speak to iShares to understand why they said that the investment could not be held by the SIPP.

- The investment was approved by their technical team as it did not pose an unnecessary risk or, as an investment, it did not seem unsuitable. There was a short delay on their part, although the majority of the delay was in having to wait for iShares to come back to them in respect of their instructions. When iShares did come back, their advice was that a SIPP was not compatible with their particular type of investment.
- They did not believe that he had suffered a loss of investment in respect of iShares investment because the investment itself was not one that could be held on the SIPP. He was responsible for checking the eligibility of the investment in question. They acted in good faith and progressed the investment instruction until it became apparent that it was not compatible with a pension scheme.
- They repeated their previous offer of £100.

23. Alliance responded to Mr Morton as follows:

- They confirmed that the services they provided were largely similar to the services provided by Curtis Banks. Some investments may be held by his SIPP, while others may require the opening of a stockbroking account. The stockbroking account would be held within his SIPP, operating like a dealing platform.
- As neither their own nor Curtis Banks' Full SIPP offers an integrated dealing facility, both companies would have required an application form for a dealing account to be opened prior to purchasing iShares.
- Their Select SIPP has an integrated dealing platform which allows their clients to deal directly making purchases on any of their accepted list of investments.

Summary of Mr Morton's position

24. With regard to the sale of the Marlborough Fund holding, Curtis Banks have no service standard for this type of transaction though for transactions for quoted companies it is "same day". He believes that dealing on 25 January is an equitable

compromise, even though there would have been time to execute the sale on 24 January.

25. ETFs are generally less risky than most investment trusts because there is near certainty that, before management costs, the share price will match the target index, never falling to a discount to asset value, and stock selection risk is removed. The idea that ETFs need vetting for “suitability” is absurd for what is supposed to be a service in which the client takes full responsibility for the selection of investments.
26. It seems to him that there are two components to the reinvestment problem: his own lack of awareness that a facility for dealing in listed securities was not an intrinsic part of either Alliance’s Full SIPP or Curtis Banks’ SIPP; and the circumstances within which Curtis Banks spent from 7 February to 6 March 2013 finding out what ETFs were and identifying that they were dealt with on the Stock Exchange. In Alliance’s Full SIPP handbook it does not state that access to facility for dealing in securities on a Stock Market needs to be the subject of an additional application. Accepting that Alliance’s procedures for purchasing iShares would not be different from those of Curtis Banks, he does not feel that he had made a material contribution to this problem.
27. If he was to accept Curtis Banks’ suggestion that they could reasonably have been expected to execute the sale of Marlborough holding on 29 January 2013, the next question would be when the reinvestment of the proceeds might have been effected. That date would have been 4 February, given that they were not prepared to reinvest until the money was available.
28. Even if he accepted that Curtis Banks needed to vet the “suitability” of iShares, it is reasonable to expect that the very simple answer to his question, requiring no research, should have reached him within 24 hours. He would therefore on 5 February have been confronted with the question as to whether he should appoint stockbrokers to deal with the purchasing of iShares or buy an equivalent investment. He is advised that the process of signing up with a stockbroker to act for him would take no more than two days. If he had felt confident that Curtis Banks would not cause further delay he would have stuck with his first choice of purchasing iShares and therefore would have purchased them on 7 February.

Summary of Curtis Banks' position

29. What was paid into the SIPP was based on the share price at the point of liquidation and not on the share price prior to this.
30. Mr Morton's original instruction to invest in iShares was on 24 January 2013, but the instruction would not have been considered until the Marlborough Fund holdings were sold and there were funds available to make further investment. This was on 5 February, when it was confirmed that the sale had taken place.
31. Mr Morton never gave them a firm indication that he was interested in a stockbroker account. It is with hindsight that he is saying he would have taken out a stockbroker account, upon finding out that the iShares investment was not compatible with the SIPP. His sole intention from the start was to invest in the iShares. As this was not open to him on a direct basis he transferred his pension to a new provider, taking out a different type of SIPP that could hold the iShares on its own platform. This was a different product, not directly comparable to that offered by them.
32. If Mr Morton had fully researched the compatibility of the iShares with the SIPP, he would have been aware that it was not possible to hold it directly in the SIPP. If he wanted to invest in iShares he would have had to transfer out to a pension product with a platform feature or set up a stockbroker account in the SIPP. Curtis Banks say that if Mr Morton had carried out adequate research himself and decided to set up a stockbroker account than their due diligence checks would have been unnecessary. Basing any loss assessment on Mr Morton having set up a stockbroker account is inconsistent with the steps he actually took – being to transfer to a different type of SIPP.
33. Their investment team would not look ahead at a client's investment choice, as it would be wrong to review an investment before the client was able to invest in it as they would not know how many units of investment could be bought (which is part of their due diligence process), there could be material changes to the investment itself and the client could change their mind on their proposed investment. In addition, to do so would have a profound effect on their current workloads which would need to be resourced differently and would mean different service level agreements for their products.

34. Curtis Banks had recently acquired Alliance's book of business on all investments coming through that book and the Dundee office was being checked by their Bristol office to make sure they were suitable. The investment in iShares would have been passed to their Bristol office to look at and decide if it was not compliant from a HMRC point of view. They had some problems with their record keeping at the outset of the Alliance acquisition.
35. Unfortunately, the member of staff who liaised with iShares no longer works for Curtis Banks and he did not document his dialogue with them. They believe that they contacted iShares at least once by email and then chased the matter at least once by a phone call. On 5 March a member of staff at iShares phoned their Dundee office and confirmed that the product was not compatible with their SIPP product. Unfortunately, this was not properly recorded at the time.
36. The earliest they could have sent the sale request to Marlborough was 25 January 2013. They have contacted Marlborough and spoken in depth with them about the process and the earliest date the sale could have been carried out is 28 January. The share price at that date was 95.34p, so if they were sold on at that date the total proceeds would have been £119,023.37. However, the actual proceeds of the sale of the Marlborough holding were £116,886.72. They are prepared to pay Mr Morton the difference, ie £2,136.65, plus a further £250 as a gesture of goodwill.

Conclusions

37. Alliance were the providers of the Full SIPP when Mr Morton set up the SIPP. They are also the providers of the Select SIPP. Their Full SIPP business was acquired by Curtis Banks shortly before Mr Morton instructed the sale of the Marlborough holding. They were not involved in the sale of the Marlborough holding and the Select SIPP was set up shortly before the iShares were purchased. Therefore, I am unable to find maladministration and do not uphold the complaint against them.
38. There are two parts to Mr Morton's complaint: first, the delay in the sale of the Marlborough holding; and second, the delay in reinvesting in the proceeds in the purchase of iShares.

The delay in selling the Marlborough holding

39. Mr Morton says that the earliest date the Marlborough holding could have been sold is 25 January 2013. However, Curtis Banks say that that date is 28 January. Curtis Banks' service level standard says that the purchase/sale form would be processed on the "same day". Mr Morton had emailed his instructions to sell the holding on 23 January 2013, but there was no form enclosed. Curtis Banks have not said that they needed a form completed in order to sell the holding. Therefore, they could and should have processed his instructions on 24 January, which means that the holding could have been sold by 25 January 2013. If the holding had been sold on 25 January, the proceeds of the sale would have been £118,886.04.
40. I therefore find that there was a delay by Curtis Banks in selling the Marlborough holding. As the actual proceeds of the sale of the holding were £116,886.72, there was a shortfall of £1,999.32 as a result.

The delay in purchasing iShares

41. Curtis Banks say that the instructions to purchase iShares would not have been considered until the Marlborough shares were sold and the proceeds were in the SIPP bank account. However, according to their service level standards they would process a purchase form on the "same day".
42. While I accept that iShares could not be purchased until the proceeds from the sale of the Marlborough shares were in the SIPP bank account, I cannot see that this should have prevented Curtis Banks from starting to consider the implications of Mr Morton's instructions. If they had, their technical department could have started to assess the investment and started the necessary due diligence checks around the end of January 2013. Around the same time, they could have sent Mr Morton any other forms that required completion.
43. Curtis Banks say that if Mr Morton had researched the compatibility of the iShares with the SIPP, he would have been aware that it could not be held directly in the SIPP. Curtis Banks' brochure on their website for the SIPP shows that investments can be made in ETFs. As iShares are ETFs, Mr Morton had no reason to believe that he could not invest directly in iShares. It was only after he had contacted

iShares directly himself that he discovered he needed to set up a stockbroker account if he wished invest in their funds.

44. I do not see why it would have been wrong for Curtis Banks to look into the practical aspects of the proposed iShares investment. As they have stated, none of their other clients held investments in iShares and therefore this was a new area of investment for the SIPP. They had a clear instruction to make the investment, even if the cash was not available.
45. Mr Morton gave Curtis Banks instructions in late January 2013 for the proceeds of the sale of the Marlborough Fund to be invested in iShares. It was not until 6 March 2013, over five weeks later, that Curtis Banks confirmed that they were happy for the investment to proceed. In confirming this, they must have thought that investment in iShares was compatible with the SIPP. However, at that time they had not checked this with iShares; if they had they would have known that a stockbroker account needed to be set up before an investment could be made.
46. In my view, it would not be unreasonable to expect Curtis Banks to have carried out due diligence checks within five working days, which would have revealed that the investment could not be made without a stockbroker account. Mr Morton could then have decided either to transfer to a vehicle that could invest directly in iShares or to invest through a stockbroker account in the SIPP. Mr Morton says he would have taken the latter route. If he had done, then it would have taken another two to three days to appoint a stockbroker and purchase iShares. Therefore, a reasonable date iShares could have been purchased was 7 February 2013 (at which time the Marlborough Fund proceeds were available). If he had taken the alternative route of moving to an alternative SIPP, the timescale would have been very similar.
47. If iShares had been purchased on 7 February then the proceeds of £118,886.72 would have purchased 9,089 shares (at a share price of £13.08). As the number of shares actually purchased was 8,489, Mr Morton has suffered a loss of 600 shares.
48. For the reasons given above, I uphold the complaint against Curtis Banks.
49. The matter will have caused Mr Morton some distress and inconvenience. I consider a payment of £300 would be appropriate. It takes into account not only the

distress caused by the delayed Marlborough sale, for which Curtis Banks offered £250, but also that in relation to the iShares investment.

Directions

50. I direct that within 14 days of the date of this determination, Curtis Banks are to secure 600 iShares which, having liaised with Alliance, they will transfer into Mr Morton's Select SIPP.
51. At the same time, they are to write to Mr Morton asking for evidence of additional dividends which he would have received had the iShares (including the additional 600) been purchased on 7 February 2013. Within 14 days of receiving this evidence, Curtis Banks will pay an equivalent sum into his Select SIPP, plus simple interest at the average rate payable by the reference banks for the time being, from the dividend date to the date of payment.
52. Finally, within 14 days of the date of this determination, Curtis Banks shall pay direct to Mr Morton £300 to compensate him for the distress and inconvenience, he has suffered.

Tony King

Pensions Ombudsman

11 February 2015