PO-4322

Determination by the Pensions Ombudsman

Applicant	Mr Nigel Atkinson
Scheme	Hornbuckle Mitchell Personal Pension Plan (**the SIPP**)
Respondent	Hornbuckle Mitchell Group Ltd

Complaint summary

Mr Atkinson complains that Hornbuckle Mitchell Group Ltd (**HMGL**) failed to complete a transfer of funds between two US dollar (**USD**) bank accounts held in the SIPP on a timely basis. He says that he has suffered a considerable financial loss as a consequence of the delay because he could not use these funds to purchase US stocks at the end of December 2013.

Summary of the Ombudsman's determination and reasons

The complaint should be partly upheld against HMGL because they were responsible for some delays and deprived Mr Atkinson of the opportunity to make investments when he wished.

DETAILED DETERMINATION

Material Facts

1. HMGL have administered the SIPP since 2008. It is invested in private companies and accounts at three brokerage firms in the UK and USA. The SIPP also has a USD current account with Lloyds Bank (**Lloyds**) and a UK bank account with Bank of Scotland.

2. On 22 October 2013, Mr Atkinson told HMGL that one of his UK brokers, Stocktrade, could also now operate a USD account in the SIPP. He asked HMGL for permission to open one and they agreed on 12 November, but then sent an e-mail to the wrong department at Stocktrade to notify them.

3. On 18 November, Mr Atkinson told HMGL that Stocktrade was still waiting for confirmation from them that he could open a USD account and supplied them with the correct e-mail address to use. He also instructed HMGL to transfer “the balance of funds” held in the Lloyds USD account to the Stocktrade USD account.

4. HMGL sent an e-mail on 2 December to Stocktrade, using the address provided by Mr Atkinson, to confirm that he could open a USD account with them. Stocktrade replied on the same day saying that they had set the account up and supplied HMGL with relevant details including the name of the beneficiary bank, the account name, the account number and international bank account number (**IBAN**). They did not provide HMGL with details of the bank sort code though.

5. On 3 December, HMGL sent Mr Atkinson an instruction letter addressed to Lloyds’ Business Centre in Leadenhall Street, London. HMGL asked him to sign and return this letter (which was incorrectly dated 16 April 2012) so that they could close the Lloyds USD account and transfer the balance of $159,910 (plus interest) to the Stocktrade USD account.

6. In an e-mail of 4 December, Mr Atkinson informed HMGL that he did not want to close the Lloyds USD account because he was considering repatriating USD funds from Cambria Capital (one of his US brokers) without converting the funds into sterling in the future. He also said:

> "If those funds can go directly to Stocktrade dollar account it may not be an issue, but otherwise it may be wise to keep the Lloyds dollar account open.
>
> Please could you send me an amended letter or confirm we can transfer from Cambria direct to Stocktrade. If necessary we can leave a small amount of funds in the Lloyds account by, say, transferring $159,800?"

7. HMGL replied on the next day that it should be fine for Mr Atkinson to amend the existing authority letter to show how much he wished to retain in the Lloyds USD account providing there was no minimum balance, and he initialled his changes. They also suggested that Mr Atkinson (via his IFA) should check that this would also be acceptable with Lloyds.

8. On 10 December, Mr Atkinson informed HMGL that the Lloyds USD account did not have a minimum balance. He also said that he did not consider it appropriate for him to manually amend the instruction letter and asked HMGL to send him a new one showing the correct date and a transfer amount of $159,750.

9. HMGL sent Mr Atkinson a new instruction letter on 7 January 2014 and apologised to him for the delay. This letter was dated 17 December 2013 and showed that the contact address for the Leadenhall Street branch of Lloyds to be in Birmingham when it was, in fact, in Andover.

10. HMGL used the correct Andover address on their covering letter to Lloyds dated 10 January with the signed instruction letter.

11. Lloyds informed Mr Atkinson on 3 February that the transfer to the Stocktrade USD account had not yet taken place. Mr Atkinson asked HMGL on the next day to sort this out urgently because he was missing out on investment opportunities. He told them that he already had to sell some existing stocks in the SIPP which he would preferred not to have done in order to buy some new US stocks and incurred additional dealing costs and foreign exchange losses.

12. HMGL apologised for the delay to the transfer which, in their view, was caused by the loss of the instruction letter in the post. They sent him a new instruction letter showing the correct Lloyds contact address for completion and return.

13. On 5 February, Mr Atkinson told HMGL that Lloyds had suggested that the new instruction letter should be sent directly to Mr U (of Business Banking) in their Birmingham branch instead of their mail processing centre in Andover. He said that it would be unnecessary for HMGL to amend the address shown on the instruction letter providing they sent a covering note/compliment slip to Mr U with it.

14. HMGL informed Mr Atkinson that they had sent the new instruction letter to Mr U on 6 February by special delivery.

15. On 12 February, Mr Atkinson informed HMGL that details of the transfer were still not showing on his on-line Stocktrade account and asked them to check with Lloyds whether or not the transfer had been carried out yet.

16. HMGL also received an e-mail from Stocktrade on 12 February showing the same beneficiary bank and account name for their USD account but a different account number and IBAN. Stocktrade provided the sort code for the account in this e-mail.

17. HMGL sent copies of both e-mails showing the original and new bank account details to Mr Atkinson. They also provided him with another instruction letter showing the new account details by e-mail for completion and return.

18. Mr Atkinson sent another e-mail to HMGL on 12 February to inform them that he had posted the completed instruction letter and asked them to ensure that it went to Mr U. He was also concerned that Mr U had not yet received the previous instruction letter and asked HMGL to liaise with Mr U to ensure that his funds were not credited to a wrong bank account.

19. HMGL confirmed to Mr Atkinson in an e-mail dated 14 February that they had sent the letter to Mr U using recorded delivery. On 19 February, Lloyds informed Mr Atkinson that Mr U had still not received the new instruction letter.

20. On 26 February, Mr Atkinson asked HMGL to ascertain the whereabouts of their letter of 14 February to Mr U. HMGL replied that, according to the Post Office, this letter had been delivered to Lloyds' Andover address on 17 February and they had hoped that it would have been redirected to Mr U by now.

21. Mr Atkinson notified HMGL on 5 March that Lloyds had still not received the new authority. On 6 March, Lloyds asked HMGL to send another authority to Mr U by

special delivery and provided them with his address again. HMGL did this on 11 March and received confirmation from the Post Office that the letter had been delivered on 12 March.

22. In an e-mail dated 23 April to HMGL, Mr Atkinson wrote:

> “The transfer still has not gone through. I received a call from [Mr U] this morning at Lloyds asking that we send the instruction again.
> Rather than following the same track as before, I have suggested I personally take the letter to the Leadenhall Street branch in the City. So rather than sending me a blank letter, please could you send one to me already signed by one of the authorised trustees on the mandate. I will then sign it and hand-deliver it into the hands of someone responsible at the Bank. This time I suggest you address it to the Manager at the Leadenhall Street branch in London and not to [Mr U] (although he could be copied in.) I fear if we address it to [Mr U] it will be re-directed into their internal mail, never to be seen again.”

23. HMGL sent the new partially signed instruction letter to Mr Atkinson on 29 April who then delivered it to the Leadenhall Street branch of Lloyds on 6 May after completing it.

24. Lloyds notified Mr Atkinson that:

- no sort code for the Stocktrade USD account had been provided in the instructions; and
- the account details were incorrect; and
- they were unsuccessful in their attempt to make the payment to Stocktrade.

25. Mr Atkinson contacted Stocktrade for the correct account details on 14 May. It transpired that they were the same as those which HMGL had been using up to 12 February in their instruction letters. He provided Lloyds with the original bank details and the money was paid into the Stocktrade USD account on 16 May 2014.

26. When Mr Atkinson complained, HGML offered him £50 compensation, which he has declined.

Summary of Mr Atkinson's position

27. The SIPP was administered up until mid-2013 by a designated pension administrator at HMGL with whom he could deal directly. He now has to deal with a client servicing department at HMGL which he contends “does not acknowledge correspondence, fails to deal with requests promptly and makes frequent mistakes.”

28. There was a very long delay in the early stages of the transfer before HMGL initiated his transfer instructions.

29. He paid a fee of $5,500 for investment research to Stansberry & Associates. Initially he used this information to choose the SIPP investments made via his delegated account at Cambria Capital. When this account became fully invested, he wished to invest the USD funds held in the Lloyds account.

30. The purpose of the transfer was to invest in USD quoted securities recommended by Stansbury & Associates during the last weeks of 2013. The fact that he was unable to do this without selling other securities first (which he did not want to do) has caused a loss of opportunity and profit.

31. He has incurred additional dealing and exchange costs of approximately £2,750 by having to sell £54,454 in sterling Gold Bullion Securities on 31 January 2014 to purchase four mining stocks recommended by Stansbury & Associates.

32. Whilst Lloyds have clearly been inefficient towards the end of the transfer process, this was to a large extent due to HMGL using incorrect addresses and IBAN, omitting sort codes and not using Lloyds’ own transfer forms.

33. He has prepared a spreadsheet showing how he would have invested $160,000 in December 2013 based on the Stansbury & Associates research reports. This spreadsheet shows that between mid-December 2013 and mid-May 2014 (when the USD funds were eventually transferred into the Stocktrade USD account) his hypothetical portfolio would have increased by $23,566.

34. Mr Atkinson says that:

- his assessment that he has suffered a $23,566 financial loss was based on a “realistic likely date” for the completion of the transfer of funds between the two USD accounts;

- in his view, less weight should be given to the actual SIPP transactions completed in late January/early February because it cannot be assumed that these were the transactions which he was originally planning for USD funds;
- the mining stocks transactions were driven by circumstances and advice at the time they were made; and
- these may not have taken place at all if the USD funds had been invested as planned in December 2013.

Summary of HMGL's position

35. It is reasonable to expect that Lloyds received the instruction letter sent to them on 10 January 2014 and also the subsequent letters sent by special delivery to the correct contact address for Lloyds' Andover branch. Lloyds should have forwarded these letters to the correct department but it would appear that they lost them.

36. They concede that they should have confirmed to Mr Atkinson that they were happy for him to open a USD account with Stocktrade and provided him with an instruction letter much earlier than they actually did.

37. They complied with Mr Atkinson's instructions using the bank account details provided by Stocktrade. Revised details were supplied on 12 February 2014 by Stocktrade after Mr Atkinson had asked them to check this information. As the account name was the same for the updated details, they consider it reasonable to have used them in their instruction letters sent out after 12 February to Lloyds.

38. There is no evidence to suggest that, had the transfer process gone more smoothly, Mr Atkinson would have invested the USD funds in the way that he says.

Conclusions

39. Mr Atkinson asked HMGL whether he could open a USD account with Stocktrade on 22 October 2013. HMGL replied on 12 November that this would be acceptable. 15 working days for a reply to a simple question was too long, as HMGL acknowledge.

40. HMGL then sent an e-mail to the wrong department at Stocktrade to inform them of their decision and Mr Atkinson had to provide HMGL with the correct e-mail address on 18 November for their use. HMGL took 10 working days to re-send their e-mail using the correct address on 3 December. This was another straightforward task which could have been carried out much quicker, particularly when it was to rectify a mistake.

41. HMGL sent Mr Atkinson an instruction letter (that was dated incorrectly) requesting the closure of the Lloyds USD account. I do not, however, consider it can be said that HMGL made a mistake by specifying this account should be closed because Mr Atkinson had specifically asked on 18 November to transfer the "balance of funds" held in the Lloyds USD account. It was not unreasonable in my view for HMGL to have therefore concluded that Mr Atkinson wanted to close this account.

42. On 5 December Mr Atkinson asked HMGL to prepare a new instruction letter showing that $159,750 should be transferred (leaving a nominal amount in the account). HMGL took over one month to prepare this letter and send it to him. Having agreed to reissue the letter, it should have been done in a reasonable time. (I do not think Mr Atkinson's request for a new letter was unreasonable; it was not clear whether Lloyds would accept the letter amended as HMGL suggested).

43. I think that cumulatively HMGL's delays lost about a month in total (after allowing for each of the delayed steps to take some time).

44. Assuming that the rest of the transfer process had taken the time it did, Lloyds would not have notified Mr Atkinson until nearly four weeks later, i.e. in mid-January 2015, that the transfer to the Stocktrade USD account had not yet taken place.

45. It is extremely difficult for Mr Atkinson to say what he would have done had the USD account been set up earlier without the benefit of hindsight. However, I accept that he lost an opportunity to make investments and that there will have been a moderate, but not precisely quantifiable, loss as a result. His disappointment and distress will be proportionate to the possible loss, and the payment to compensate him should recognise that the distress is associated with actual financial harm rather than, for example, a mere disappointed expectation.

Directions

46. Within 28 days of the date of this Determination, HMGL shall pay Mr Atkinson £1,500 as compensation for the disappointment and distress identified above.

Tony King

Pensions Ombudsman

30 January 2015