

Ombudsman's Determination

Applicant	Mr H
Scheme	LV= SIPP - Mr H
Respondent	London Victoria (LV=)

Outcome

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

Complaint summary

3. Mr H has complained that LV= failed to act on his instructions which has led to a financial loss.

Background information, including submissions from the parties

4. Mr H appointed Mr R as his IFA whose firm submitted a pension transfer application to LV= on 14 September 2012, together with a covering letter saying:

"To clarify the situation, the client's Rathbones portfolio is to be moved to MPL's discretionary management service. The existing Threadneedle portfolio 6 is to be cashed in and reinvested in its entirety in a new contract, including the regular monthly employer contributions."
5. The transfer represented an internal transfer from a LV= pension policy to a new pension policy also with LV=. The original policy permitted discretionary fund management from a limited panel of investment houses, which included Rathbones. Mr H wished to change to the discretionary management team of MPL. The transfer of the Rathbones' investment to MPL was going to be an in-specie transfer.
6. The investments in the original policy included:
 - a) Rathbones – 1...6 = £312,318.00
 - b) Threadneedle portfolio 6 – T....7 = £119,223.32
 - c) Threadneedle Portfolio 6 – F....9 = £32,136.71

d) Unknown - F....3 = £2,881.24

7. Mr H also made ongoing regular contributions of £1,333.33 a month.
8. LV= cashed in the Threadneedle portfolios T.....7 and F.....9 on 21 September 2012. Portfolio F....3 followed on 8 October 2012. All proceeds (£154,241.27) from the three portfolios remained in the Trustee bank account until the in specie transfer was completed, around June 2013, some eight months later.
9. In response to the complaint, LV= offered to re-sell the portfolio(s) at February 2013, which had a unit price of £1.544. Mr R and Mr H believe the unit price should be £1.432 as it was on 21 September 2012, or close to the date that the three investment plans were cashed in by LV=. They say the difference in unit price is £0.112 which represents a financial loss of £16,952.32 between the period September 2012 to February 2013. Mr H would like this to be paid back into his pension by LV= as a financial loss.
10. Mr R also says:
 - a) LV= failed to follow the instructions provided on 14 September 2012.
 - b) LV= did not issue any correspondence or call to query the instruction letter.
 - c) Both he and Mr H were under the impression that the regular contributions and the proceeds from the cashed in portfolios would remain invested while waiting for completion of the in-specie transfer.
 - d) He made several calls to LV= in October 2012 to query the non-investment of the regular contributions and the Trustee investments, and was informed that they were dealing with the query.
 - e) He made a formal complaint to LV= via telephone on 1 February 2013, as the portfolio proceeds and the regular contributions still remained in the Trustee bank account. LV= only offered to backdate the regular contributions to the unit price in October 2012 and not the other Portfolio 6 funds.
11. LV= have said the following:
 - a) On receiving the Flexible transitions account (**FTA**) application form, the in-specie transfer request and instruction letter, LV= followed their processes and instructions provided by Mr R. Once the cash was received from the portfolios it was matched to the new policy, but not invested as it was waiting for the in-specie transfer to arrive. This process can take time as assets need to be de-registered from the old provider and registered to the new provider, and LV= had no control over the process, or the length of time taken as they had to wait for the assets to arrive.
 - b) LV= does not dispute that Mr H's proceeds from the investment of the portfolios remained in cash while waiting for the in-specie transfer to arrive.

Their process was to keep funds in the client's account until all transfers have been received unless they received specific investment instructions. Mr H signed a declaration in respect of the in-specie transfer rules which said:

"On receipt of all our requirements we will surrender any investments you have instructed to go in cash, and arrange the in specie transfer of assets once it has been confirmed that the assets are capable of assignment and can be accepted by the receiving scheme. Any investment sale proceeds will remain in the trustee bank account until we receive written confirmation that the in-specie transfer of assets has been completed" and

"If there is a large cash balance [in] your bank account which you would like to transfer to your new provider before the other assets are sold or reassigned, we will require additional written instructions to proceed."

- c) LV= say the reason they did not transfer the cash available was because the instruction letter did not confirm any partial transfers were requested. The instruction letter confirmed Threadneedle portfolio 6 was to be cashed and invested but did not instruct it to be invested while waiting for the Rathbones' portfolio to be disinvested.
- d) LV= received a complaint from the IFA in February 2013 and offered to backdate the unit price of the regular contributions to October 2012, but were only prepared to re-sell the cash investment at February 2013.

12. The application form signed by Mr H on 14 September 2012 contains a number of declarations, the "Declaration for Transfers" states:

"Where my plan will be made up of transfers from multiple sources I know that, provided that LV= /NM Pensions Trustees Ltd have all the necessary paperwork to set up the plan, the funds will be applied to the appropriate scheme/plan immediately. These funds won't be used to purchase investments until such time as LV= and or NM Pensions Trustees Ltd receives the final transfer payment unless specific investment instructions are given after funds have been received. I acknowledge that where LV= and/or NM Pensions Trustees Ltd don't have the necessary paperwork, they reserve the right to return the transfer monies to the ceding scheme, or, in the case of cheque payments, securely hold the cheque uncashed until such time as we have received the relevant paperwork".

Adjudicator's Opinion

13. Mr H's complaint was reconsidered by one of our Adjudicators who concluded that no further action was required by LV= The Adjudicator's findings are summarised briefly below:

- Where a pension is in drawdown, for a transfer to be considered a recognised transfer under the Finance Act 2004 (the **Act**), all sums and assets associated with the transfer must be transferred together. The application form completed by Mr H confirms that the pension was in drawdown.
- The declarations and documents were clear in that the investments would not be purchased until the last of the transfer monies had been received where transfers are derived from multiple sources. The wording "to be cashed in", in the covering letter, matches the declaration in respect of what should happen with the Threadneedle portfolio 6 investment. There are no further specific instructions **not** to immediately transfer into cash.
- Each new regular monthly employer contribution is in effect a new transaction, and is therefore treated differently in respect of the legislation regarding the existing assets. As such the regular contribution should have been under the new arrangement from the first payment due after the transfer request. LV= backdated the calculations on the regular contributions to October 2012 which was appropriate.
- LV= have confirmed that Mr H complained to LV= in February 2013. They have no record of any complaint before this time. It is unfortunate that LV= cannot find any records of potentially earlier conversations. Mr R has provided evidence that he had made a number of telephone calls to LV= from October 2012 onwards however, it cannot be said for certain what these calls relate to. Unfortunately Mr R has confirmed that his businesses call recordings for this period are unavailable.
- Although Mr R has described various phone calls to LV= prior to February 2013 regarding the funds remaining in cash, no specific written instruction was made to LV=. A written instruction would have been required to invest the funds away from cash, whilst the in-specie transfer was being completed. This could have been completed with the original application or at any time after, however it was not.
- Having made the details and process clear in the application form LV= have not made an error in the encashing of the Threadneedle 6 funds.

14. Mr H did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr H provided his further comments which do not change the outcome. In summary Mr H has said:

- Although various declarations were signed, the letter dated 14/9/2012 was a specific instruction to cash in the investment and reinvest immediately. LV= had taken the instruction to "cash in" but did not reinvest as the letter instructed.

- LV= were asked to contact the IFA if they had any questions regarding the 14/9/2012 instruction and they did not.
- LV= supply forms for partial transfers irrespective of the legislation; a partial transfer should have been made based on the 14/9/2102 letter.

Ombudsman's decision

15. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr H for completeness.

- The declarations signed by Mr H clearly outline the process and warn of the potential that funds will be held in cash whilst all existing investments are being cashed in prior to the setting up the new arrangement. The IFA has said that the letter sent with the application form is a specific investment instruction that outlines what to do with the investments outside of the declaration. The outcome of the complaint rests on the interpretation of the IFA's letter.
- In my view the covering letter sent by MPL Wealth Management is not clear in its intention. Any letter of instruction should clearly outline what is intended for all the affected investments and a timescale for that action. The letter confirms that "The existing Threadneedle portfolio 6 is to be cashed in and reinvested in its entirety in a new contract". If the IFA's intention was to cash in and reinvest immediately without waiting for the in-specie investment then the IFA needed to have specifically stated that.
- The letter reads as a covering letter for the application submission. It lists four enclosures; the application form, employer details form, in specie transfer request form and a copy of the authority letter sent to Rathbones. Details relating to commission and confirmation that MPL will be the new investment manager were also described. Because the letter confirms what is stated in the application form in relation to the Threadneedle 6 portfolio investments, I can see no reason why LV= would have needed to contact the IFA to clarify any details within the letter.

16. Therefore, I do not uphold Mr H's complaint.

Karen Johnston

Deputy Pensions Ombudsman
17 November 2017