

Ombudsman's Determination

Applicant	Mrs R
Scheme	Legal & General Stakeholder Pension Plan (the Plan)
Respondents	AJ Bell Legal & General Assurance Society (L&G)

Outcome

1. Ms R's complaint is upheld and to put matters right both AJ Bell and L&G should compensate Mrs R for any financial loss caused by the transfer delay.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs R is complaining that she has suffered financial loss as a consequence of delays on the part of L&G and AJ Bell in transferring her Plan benefits to TD Direct SIPP (the SIPP).

Background information, including submissions from the parties

4. The SIPP is administered by AJ Bell. The Plan is provided by L&G.
5. On 6 October 2014, Mrs R sent the transfer paperwork to AJ Bell who then emailed Mrs R with confirmation of receipt. It also advised her that:

“...we do not actively chase ceding schemes during cash transfers”.
6. AJ Bell forwarded this information to L&G on the same day.
7. On 16 October 2014, AJ Bell received Mrs R's Plan funds for the amount of £35,016.34. However, as AJ Bell had not received the relevant transfer information from L&G, it was unable to invest the funds in Mrs R's SIPP account.
8. On 21 October and 31 October 2014, AJ Bell contacted L&G and requested the missing paperwork. AJ Bell said that it was told that this information would be emailed by L&G on the same day, however it had not received it.

PO-8550

9. On 3 November 2014, Mrs R raised a formal complaint to AJ Bell as she was aggrieved that her transfer had been delayed. The same day Mrs R called L&G and requested confirmation of the transfer. L&G subsequently emailed Mrs R confirming that it sent the relevant paperwork to AJ Bell via post and email.
10. On 4 November 2014, Mrs R contacted AJ Bell to check whether it had received the paperwork from L&G, however this had not been received. It was not until 11 November 2014 that AJ Bell received the transfer paperwork from L&G.
11. On 13 November 2014, AJ Bell invested Mrs R's Plan funds in line with her instructions.
12. On 3 December 2014, Mrs R wrote a letter to AJ Bell stating that she had not heard back from it with regard to her complaint. Mrs R further stated that she would wait 8 weeks for its response before she would take it further to the regulator.
13. On 29 December 2014, AJ Bell sent a letter to Mrs R stating:

“...Whilst we cannot offer any firm guarantees about the length of time it would take to complete a SIPP transfer, we advise that it should be around two to four weeks...While the time taken to complete the cash transfer is disappointing, I feel that these delays cannot be appointed to TD Direct Investing. AJ Bell had contacted L&G to ask for the required paperwork and could not proceed until it was received. Whilst it is regrettable we did not receive this in a timelier manner we cannot be held accountable for any subsequent delay.”
14. On 18 March 2015, Mrs R brought the complaint to The Pensions Advisory Service (**TPAS**). The TPAS adviser proposed to write to both L&G and the SIPP on Mrs R's behalf.
15. On 7 April 2015, TPAS received a formal response to Mrs R's complaint from L&G. It confirmed that the paperwork was authorised on 13 October 2014 and sent by post to AJ Bell. It did not accept liability for the delay in transferring Mrs R's Plan funds.
16. On 11 April 2015, TPAS received a formal response from AJ Bell saying it did not receive the required transfer paperwork until 11 November 2014. It did not accept liability for the delay in transferring Mrs R's Plan funds.
17. On 21 April 2015, Mrs R brought her complaint to the Ombudsman. She calculated she had sustained a loss of £2,095 over the period of delay which occurred during the transfer.

L&G's position:-

18. L&G has managed to provide this office with a copy of the original letter sent to AJ Bell dated 13 October 2014, some system notes showing communications and some emails. However, it has not been able to provide a copy of the email dated 13 October 2014 which it says had been sent to AJ Bell with the original transfer letter. It

said that due to the length of time that has elapsed it is unable to locate all of the emails.

19. The original letter was sent to AJ Bell at least three times before AJ Bell actioned the transfer. L&G believes that AJ Bell was expecting further information from it, not realising that the letters it was sending, already contained all of the information it was prepared to send.
20. As that letter had not been returned, it had no evidence to suggest it had not been received by AJ Bell.

AJ Bell's position:-

21. AJ Bell sent an email to this office explaining that it had not received L&G's original letter dated 13 October 2014. However, it said that L&G had emailed this information to it on 31 October 2014.

22. AJ Bell explained the process of the transfer as follows:

“...there are a number of steps we must take before these are available for trading. We must identify the source of funds and which customer they belong to, we review the transfer information provided, we must then update our records to reflect receipt of funds and to confirm details of the transfer. Funds are then paid to TD Direct Investing who allocate them to the customer's account ready for dealing...we expedited the transfer and allocation of funds; however, under usual circumstances we require five working days to complete these tasks once transfer information is received”.

23. AJ Bell sent a copy of terms & conditions (T&Cs) for the SIPP services that say:

“You may experience delays of up to five (5) Business days before your funds are available for use...The funds will be credited to the Payee's Account on the same Business Day on which we receive your instruction providing that instruction is received before the cut-off time (12 midday)...”

24. AJ Bell has provided the actual number of units purchased in each fund for Mrs R, which is shown below.

25. Prices as at 17 October 2014:

- Vanguard Funds PLC FTSE All World UCITS ETF (GBP) – £41.0900
- Vanguard Funds PLC FTSE 250 UCITS ETF GBP INC NAV - £24.1200
- Vanguard Funds PLC FTSE 100 ETF INC UCITS ETF - £28.3950

26. Prices as at 13 November 2014:

- Vanguard Funds PLC FTSE All World UCITS ETF (GBP)- £44.27192

- Vanguard Funds PLC FTSE 250 UCITS ETF GBP INC NAV- £25.695
- Vanguard Funds PLC FTSE 100 ETF INC UCITS ETF - £29.869655

27. AJ Bell said that it extensively reviewed its records and confirmed that it had not received the required transfer paperwork until 11 November 2014. However, as a gesture of goodwill it will make a payment to Mrs R for any perceived loss for the period from 7 November 2014, which assumes the funds would have been received on 31 October 2014 and invested 5 working days later as permitted by the T&Cs.

Mrs R's position:-

28. Mr R refused to accept this offer on behalf of Mrs R. He said that it is not Mrs R's fault that AJ Bell had not received the transfer paperwork until 11 November 2014. He also said that Mrs R would like to be compensated for the whole period of the delay and not just for the period offered by AJ Bell.

Adjudicator's Opinion

29. Mrs R's complaint was considered by one of our Adjudicators who concluded that further action was required by AJ Bell and L&G. The Adjudicator's findings are summarised briefly below:

- The starting point was for the Adjudicator to decide whether L&G were responsible for any delays and if so, whether this constitutes maladministration.
- L&G said that it sent the original transfer paperwork to AJ Bell on 13 October 2014 and an email to AJ Bell at point of authorisation. However, it has not been able to send the Adjudicator a copy of the email to confirm that this was the case. It has sent this office all the other emails that had been sent to Mrs R and AJ Bell. So on balance, it is reasonable to assume that the email had not been sent to AJ Bell.
- AJ Bell said that it received Mrs R's funds on 16 October and is allowed 5 working days to process the transfer. So on 21 October 2014, when it realised that it had not received the transfer paperwork, it chased L&G for it.
- The Adjudicator believed, in the absence of the copy of the email sent from L&G to AJ Bell, L&G should be responsible for compensating Mrs R for the period of 21 October 2014 until 31 October 2014.
- The Adjudicator turned to AJ Bell's actions.
- AJ Bell has, as a gesture of goodwill, made an offer to Mrs R.
- AJ Bell's offer is to calculate the loss between 7 November 2014, which is 5 working days after L&G's email dated 31 October 2014, and 13 November 2014, when the money was actually invested.

- L&G has provided evidence that the email dated 31 October 2014 was sent, however AJ Bell has been unable to find any record that this was received. In the Adjudicator's opinion it is more likely than not that L&G did correctly send the email, for example the Adjudicator has not been provided with any evidence that the email failed, was returned or was incorrectly addressed. The Adjudicator therefore considered that AJ Bell did receive the email but failed to act on it until 11 November 2014. This amounts to maladministration.
- Although AJ Bell claims that it is allowed 5 working days to process a transfer. Within the SIPP terms and conditions, the only such provision, Rule 2.1, is in relation to contributions or transfers paid by direct debit: -

“You may experience delays of up to five (5) Business days before your funds are available for use if You pay Contributions by direct debit.”

- That said, the Adjudicator did not consider it unreasonable that AJ Bell is permitted some time to deal with the transfer, this would be wholly consistent with industry standard practice. AJ Bell first received Mrs R's money on 16 October 2014, so this is when the Adjudicator considered that the clock started running.]It was her opinion that AJ Bell should provide redress to compensate Mrs R for any loss from 31 October 2014 until 13 November 2014 when the funds were actually invested.
 - It was therefore the Adjudicator's opinion that this complaint should be upheld against both L&G and AJ Bell.
30. AJ Bell and L&G did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Both parties provided their further comments which do not change the outcome. Mrs R agreed with the Adjudicator's Opinion but provided a further comment.
 31. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mrs R, AJ Bell and L&G for completeness.
 32. AJ Bell contends that it is inappropriate to consider loss before 7 November 2014. The reason for this is that it was able to complete certain tasks required prior to receiving the paperwork i.e. identifying the source of funds. However, it is not possible for AJ Bell to complete the remaining tasks i.e. reviewing the information provided, until it has received the relevant paperwork.
 33. L&G maintains its argument that it should not be held liable for covering Mrs R's financial loss. It says that the original letter dated 13 October 2014 was sent and it was sent to AJ Bell's correct address. L&G believes that the letter may have been lost in AJ Bell's office.
 34. Mrs R accepts most of the Adjudicator's findings however she has also queried whether or not interest should be added to the compensation amount.

Ombudsman's decision

35. To effect a prompt transfer requires cooperation between the ceding and receiving scheme, including resolving any mismatch of processes or difficulties associated with lack of clarity about instructions. In this case the difficulties which arose were not dealt with promptly. The net result was a delay in processing the transfer and money remained disinvested for longer than it should have been while the necessary administrative processes caught up with the transfer of funds. The injustice caused was loss of potential investment return. The issue is which of the two respondents is responsible for any loss which has in fact been incurred. There has been no suggestion of a failing by Mrs R who actively chased the process down.
36. I consider that both respondents share the responsibility for the outcome in roughly equal proportion for the following reasons.
37. For the reasons given by the Adjudicator, in the Opinion, I do not think that the L & G's email dated 13 October had been sent to AJ Bell. It was maladministration to send an electronic transfer of funds without the necessary instructions setting out how the recipient should deal with it. Once AJ Bell had received a transfer of money without the instructions which it needed to complete the transfer process, they were in my view required to make the necessary enquiries to work out what to do with that money. They did that but on receiving the answer they needed they then took longer than they should have done to act on it. If the transaction had gone smoothly I consider that the money should have been invested at the latest the day after it was received and Mrs R should be compensated for the loss (if any) of being out of the market for the additional period.
38. Turning to the shares of responsibility for the loss, I consider that L&G were primarily responsible for delay up to 31 October, the date on which they can demonstrate that they sent the relevant instructions, a period of 15 days. I consider AJ Bell were primarily responsible for the period from 1 November to 13 November, a period of 13 days. I therefore find each was responsible for the delay in roughly equal measure and should therefore compensate Mrs R for her losses in proportion to their share of responsibility.
39. Based on the published unit prices, I am satisfied that there had been an upward movement in those units therefore Mrs R was likely to have incurred a financial loss.
40. Therefore, I uphold Mrs R's complaint. I consider that the award of lost investment return directed below is a complete remedy and do not make any separate award of interest.

Directions

41. Within 28 days AJ Bell shall calculate the net difference between the value of Mrs R's fund at the date of valuation, and the notional value of Mrs R's fund as it would be if £35,016.34 had been invested on 16 October 2014 in the same units that it was later invested.
42. AJ Bell shall provide the resulting calculation to L&G. If the difference between the actual and the notional value is positive, L&G and AJ Bell will each pay Mrs R 50% of the difference, plus any additional tax which may be incurred as a consequence of the payment falling in the wrong tax year.

Karen Johnston
Deputy Pensions Ombudsman
30 June 2017