

Ombudsman's Determination

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| Applicant | Mr S |
| Scheme | Curtis Banks Self-Invested Personal Pension (the SIPP) |
| Respondent | Curtis Banks Ltd (Curtis Banks) |

Outcome

1. Mr S' complaint against Curtis Banks is partly upheld. To put matters right, Curtis Banks shall pay Mr S interest on the pension contribution (**the Contribution**) that was transferred to Investec Wealth on 31 January 2020 (**the Interest Amount**). The rate of interest should be 8% per annum simple and calculated for the period from 21 to 31 January 2020.
2. In addition, Curtis Banks shall pay Mr S interest on the Interest Amount, such interest to be calculated at the base rate for the time being quoted by the Bank of England between 1 February 2020 and the date of settlement.

Complaint summary

3. Mr S has complained that Curtis Banks transferred the Contribution from the SIPP to a third party in error, with the result that investments in the SIPP were purchased at a later date. He seeks compensation for any financial injustice he has incurred, as well as an award for the distress and inconvenience he suffered.

Background information, including submissions from the parties

4. Mr S held the SIPP, which was administered by Curtis Banks. The investments in the SIPP were managed by Investec Wealth.
5. On 8 January 2020, Investec Wealth sent an email to Curtis Banks and informed it that Mr S intended to pay the Contribution, totalling £40,000, into the SIPP. Investec Wealth requested information about the best way to do this.
6. On the same date, Curtis Banks replied that Mr S needed to complete a Contribution Form and submit it by post to its Bristol Office. Alternatively, he could submit it using Curtis Banks' online portal.

7. On 14 January 2020, Investec Wealth sent Mr S' completed Contribution Form to Curtis Banks by email and asked it to check that the Form had been completed correctly. Investec Wealth also confirmed that Mr S would be paying the Contribution on the same date.
8. Curtis Banks replied that it required part 3.2 of the Contribution Form to be completed. It added that it could accept a copy via its online portal, but if it was sent by post then it required an original signature. It also confirmed that it could not accept a copy by email.
9. On 17 January 2020, Investec Wealth sent a copy of the completed Contribution Form to Curtis Banks by email and asked it to confirm that it had been completed correctly, so it could send it by post.
10. On the same date, Curtis Banks informed Mr S that it was in receipt of the Contribution and asked him to confirm whether he had any investment instructions to give. Mr S replied that the Contribution should be credited to the "SIPP account manager on my behalf by Investec".
11. On 20 January 2020, Curtis Banks allocated the Contribution into the SIPP's bank account and confirmed to Investec Wealth that the Contribution Form had been completed correctly. Investec Wealth posted the Form on the same date.
12. On 21 January 2020, Curtis Banks received the Contribution Form and informed Investec Wealth that it had received the Contribution. Investec Wealth asked Curtis Banks what was required for the Contribution to be transferred to Mr S' investment portfolio.
13. On 22 January 2020, Curtis Banks replied that it required an instruction to be sent via its secure messaging system or in a signed letter. On the same date, Investec Wealth informed Curtis Banks that Mr S had already sent his instructions. After checking, Curtis Banks confirmed that it had already received Mr S' instructions via its secure online portal.
14. On 24 January 2020, Curtis Banks transferred £39,568.72 to Investec Bank, which is a different entity from Investec Wealth.
15. On 27 January 2020, Investec Wealth asked Curtis Banks to confirm when it could expect to receive the Contribution.
16. Between 28 and 30 January 2020, Curtis Banks and Investec Wealth entered into extensive correspondence, as it transpired that Curtis Banks had transferred the Contribution to the wrong company.
17. On 31 January 2020, Investec Wealth received £39,568.72 from Investec Bank.
18. On 3 February 2020, Investec Wealth complained to Curtis Banks on behalf of Mr S, regarding the error of sending the Contribution to the wrong company.

19. On 4 February 2020, Investec Wealth informed Curtis Banks that the Contribution had been applied to Mr S' investment portfolio and would be available for investment the following day. It also confirmed that Mr S wished to pursue his complaint and to seek compensation for the missed investment returns.
20. On the same date, Curtis Banks sent an email to Mr S and said that an error had occurred when transferring the Contribution to Investec Wealth for investment. Curtis Banks explained that the Contribution had been sent to Investec Bank instead. As soon as Curtis Banks was notified of its error, an internal reconciliation exercise was completed, and Investec Bank was contacted to rectify the matter. Curtis Banks also confirmed that the Contribution had been received by Investec Wealth, which was in the process of applying it to Mr S' investment portfolio. Curtis Banks apologised for the error and assured Mr S that additional measures had been implemented to ensure this did not happen in the future.
21. Also on the same date, Mr S replied to Curtis Banks and said that Investec Wealth had already raised this issue as a formal complaint. In the complaint, the matter of compensation for loss of use of the money was raised. He added that his experience with Curtis Banks had been dismal, due to delays, errors, and miscommunication.
22. On 5 February 2020, Curtis Banks contacted Investec Wealth and asked it to confirm whether Mr S had suffered any loss as a result of the delay in sending the Contribution to the correct party.
23. On 7 February 2020, Curtis Banks acknowledged Mr S' complaint.
24. On 2 March, 30 March and 29 April 2020, Curtis Banks informed Mr S that it was still investigating his complaint.
25. On 20 July 2020, Curtis Banks responded to the complaint. It said:-
 - It had received the Contribution on 22 January 2020. It then attempted to pay the Contribution to Investec Wealth by "next day Faster Payment", on 24 January 2020. Investec Wealth should have received the money by 25 January 2020. Instead of this, Curtis Banks sent the Contribution to Investec Bank in error.
 - This should not have happened, and feedback had been provided to the department responsible. Action to rectify the error began immediately and the Contribution was paid to Investec Wealth on 31 January 2020.
 - Its error meant that there was a seven-day delay for the Contribution to reach the correct recipient. In recognition of this, Curtis Banks offered Mr S £61.32, which represented seven days' interest on the amount transferred, at the rate of 8% per annum.
26. On 24 July 2020, Mr S informed Curtis Banks that he was rejecting its offer. He said:-

- Curtis Banks' delay in dealing with the matter was unacceptable. It had presented the nationwide lockdown due to COVID-19 as the reason for the delay. However, the issue predated the lockdown by at least five weeks.
- The dates Curtis Banks gave in its complaint response were not accurate. The Contribution was transferred to Curtis Banks on 14 January 2020, using Bankers' Automated Clearing System (**BACS**). He could not understand why Curtis Banks received it on 22 January 2020.
- He also did not understand why Curtis Banks stated that there was a delay of one week, when the delay was three weeks.

27. In his submissions to The Pensions Ombudsman (**TPO**), Mr S said in summary:-

- As a result of Curtis Banks' error, he lost use of the Contribution money for three weeks.
- This was not the first time he experienced poor administration by Curtis Banks. In 2017, it did not process a pension contribution paid by cheque from his employer for a period of three weeks after it was sent. As a result, the contribution was carried into the next tax year.
- He agreed with the fundamental principle of calculating his financial loss by means of an interest rate calculation. However, he disputed the period of delay identified by Curtis Banks.
- He sought financial compensation for the loss of use of the Contribution money, as well as compensation for the time he spent dealing with the matter and the inconvenience he had suffered. In his view, if one's advisers alerted them to the fact that a sum of £40,000 had gone missing on its way to them, that person would feel angry, upset, and anxious, until the funds were discovered. In addition to the time he had wasted sending and responding to emails, and the subsequent necessity to raise a formal complaint, it was not possible to measure or document the additional time taken in telephone calls with Investec Wealth and other parties, trying to resolve the issue.
- He and Investec Wealth spent several hours trying to resolve the matter. He had since spent further time chasing a response, a resolution to the complaint and referring his complaint to TPO.

28. In its submissions to TPO, Curtis Banks said in summary:-

- It accepted that it caused a delay in making the Contribution available to the correct investment account, following its receipt. Due to an administration error, the Contribution was sent to an incorrect account with Investec Bank. There followed a seven-day delay in getting the money back and transferring it to the correct investment account.

- It calculated loss at the rate of 8% per annum for the delay in making the Contribution available and made a compensation offer of £61.32. It did not have access to the investment account in order to determine what investments were made following receipt of the Contribution.
- Its response to Mr S' complaint misquoted the date the cleared funds were received. The Contribution actually cleared into Mr S' SIPP account on 20 January 2020 and was subsequently transferred to the incorrect Investec account on 24 January 2020. Investec Wealth queried the whereabouts of the Contribution on 27 January 2020 and over the next few days there were email exchanges until the money was traced.
- Subsequently, the Contribution was found by Investec Bank, and it confirmed to Curtis Banks, on 29 January 2020, that it would complete an internal transfer to the appropriate investment account. The money was received in the correct investment account in the afternoon of 31 January 2020. Had the error not occurred, the Contribution would have been available for investment on 27 January 2020, rather than 3 February 2020. This accounts for the seven days of interest Curtis Banks had offered.
- On 5 February 2020, Curtis Banks asked Investec Wealth to confirm the specific investment loss to Mr S, so that it could place him in the correct financial position and ensure no loss had occurred. Investec Wealth did not respond. In the absence of any specific loss, calculating loss at 8% per annum was fair and reasonable.
- Curtis Banks always sought to place an investor in the correct financial position. If there had been actual loss greater than the interest rate of 8% offered, it would agree to cover that loss.

Adjudicator's Opinion

29. Mr S' complaint was considered by one of our Adjudicators who concluded that further action was required by Curtis Banks. The Adjudicator's findings are summarised below:-

- Regarding Curtis Banks' error in 2017, when it delayed processing a pension contribution paid by cheque, Mr S did not provide any evidence to show that he had complained about this issue directly to Curtis Banks. As TPO cannot investigate complaints where the applicant has not brought them to the attention of the respondent first, the Adjudicator concluded that TPO could not investigate this issue as part of Mr S' current complaint.
- The SIPP's Terms and Conditions stated that, for Curtis Banks to accept a pension contribution into the SIPP, a Contribution Form had to be fully completed (see Appendix 1). In addition, Curtis Banks would only act on an investment instruction when the contribution received was in a "cleared funds state". Curtis

Banks received Mr S' investment instructions and the Contribution on 17 January 2020. However, it could not transfer the Contribution to Investec Wealth until receipt of the completed Contribution Form, which was received on 21 January 2020. In the Adjudicator's opinion, Curtis Banks had caused no delays up to that point.

- Curtis Banks should have transferred the Contribution to Investec Wealth on the date it received the completed Contribution Form, which was on 21 January 2020. Instead, the Contribution was transferred to Investec Bank, in error, and Investec Wealth eventually received it on 31 January 2023. Because of this delay, it meant that Mr S invested the Contribution at a later date than he could otherwise have done. So, he might have suffered a financial injustice if, for example, he could have purchased more units in his intended investments, had the delay not occurred
- Normally, the Adjudicator would ask Curtis Banks to compare the current value of the investments Mr S purchased with the Contribution, to the notional value of the same investments, had the Contribution been transferred to Investec Wealth on 21 January 2020. This comparison would also consider any fund switches Mr S actually made with his investments up to the date of settlement.
- However, Curtis Banks and Mr S disagreed with this comparison. In Curtis Banks' view, any loss arising from this comparison would be a perceived loss. This is because there was no evidence that Mr S' investments would have been used in a certain way. As the decision to buy or sell units at any time was taken on the basis of several factors, Curtis Banks considered that it would not be appropriate to assume that Mr S would have made the same decisions, had the transfer been made earlier. Mr S agreed with Curtis Banks. He added that it would not be possible to fairly assess his investment loss, especially when all investments were made by Investec Wealth. In addition, Mr S had parted company with both Curtis Banks and Investec Wealth.
- Having considered the parties' comments, the Adjudicator accepted that it would be difficult to calculate any investment loss accurately, given that Mr S was no longer a customer of Curtis Banks or Investec Wealth. The parties had agreed to an award based on an interest rate calculation and were satisfied with the rate of 8% per annum offered by Curtis Banks. So, the Adjudicator concluded that Curtis Banks should pay Mr S interest at the rate of 8% per annum, calculated between 21 and 31 January 2020.
- However, it was the Adjudicator's opinion that additional interest should be added to the award, for the period between 1 February 2020 and the date of settlement. The Adjudicator pointed out that the Ombudsman's prescribed rate of interest was not 8% per annum. The basis upon which the Ombudsman awarded interest in respect of late payment of benefits was specified in section 151(A) of the Pensions Act 1993 (see Appendix 2). If the Ombudsman decided to award interest, the basis was the base rate as set out in Regulation 6 of The Personal

and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1996 (No 2475) (see Appendix 3). There was no discretion on the applicable rate.

- The Adjudicator added that, although the regulations were silent on the point, it was considered implicit that the basis applying was simple interest. This was because TPO took a consistent approach in the application of statutory powers and the Courts had historically applied simple interest. The Adjudicator pointed out that the Ombudsman could only award interest at a higher rate than base rate under section 151(2) of the Pensions Act 1993 (see Appendix 4). It is a general power enabling the Ombudsman to make any direction he thinks fit and that can include the payment of interest. For the courts, Section 17 of the Judgments Act 1838, stated that every judgment carried interest of 8% per annum until the judgment was satisfied. In exceptional circumstances, the Ombudsman might look to apply a rate along those lines as applied by the courts.
 - The Adjudicator considered that should Mr S' complaint be referred to the Ombudsman, it is unlikely that he would make an award for a higher interest rate than the prescribed rate. So, the Adjudicator concluded that the interest added to the award amount, for the period 1 February 2020, to the date of settlement, should reflect the rate awarded by the Ombudsman. In addition, the Adjudicator made both parties aware that if this complaint was referred to the Ombudsman for a Determination, he may also award a lower interest rate in respect of the financial loss calculation.
 - Regarding Mr S' request for compensation towards non-financial injustice, the Adjudicator noted that Mr S had provided no evidence to show the time spent dealing with Curtis Banks and to demonstrate the inconvenience this issue had caused him. While Mr S had described the anxiety and upset one would experience if they were informed that £40,000 of their money had gone missing, the issue was resolved within seven days from the date the error was identified. In addition, while it took Curtis Banks approximately six months to respond to the complaint, the lockdown restrictions due to COVID-19 applied for at least three of those six months. In the Adjudicator's opinion, Curtis Banks resolved the issue in a timely manner, and its delay in responding to the complaint was understandable in the circumstances.
30. Curtis Banks accepted the Adjudicator's Opinion. Mr S did not respond to the Adjudicator's Opinion and has not provided any further comments.
31. As Mr S did not respond to the Adjudicator's Opinion, his complaint was passed to me to consider. Mr S was invited to submit his comments prior to the complaint being referred to me. I note that Mr S has not done so and I agree with the Adjudicator's Opinion.

Ombudsman's decision

32. Mr S' position is that Curtis Banks caused a longer delay in the transfer of the Contribution to Investec Wealth than was necessary.
33. The SIPP's Terms and Conditions require the receipt of a fully completed Contribution Form before Curtis Banks can accept a pension contribution into the SIPP. Investec Wealth posted the completed Contribution Form on 20 January 2020 and Curtis Banks received it the following day. While Curtis Banks had already received the Contribution and investment instructions before 21 January 2020, it had to wait for receipt of the Contribution Form. I am satisfied that Curtis Banks should have transferred the Contribution to Investec Wealth on 21 January 2020, so, the calculation in respect of any loss shall be from this date.
34. I note the parties' comments regarding the difficulty in calculating any investment loss Mr S might have suffered as a result of Curtis Banks sending the Contribution to the wrong party. Under the circumstances, I am satisfied that an award using an appropriate interest rate would be a pragmatic approach, given that both parties agree.
35. Under Section 151(2) of the Pensions Act 1993, I have the power to award interest at a higher rate than the one prescribed under Regulation 6 of The Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1996 (No 2475).
36. As both parties have agreed that the Interest Amount should be calculated at the rate of 8% per annum simple, I do not intend to award a lower rate of interest on this occasion. However, the decision to award the rate of 8% shall not be seen as setting a precedent for similar complaints. Each complaint is considered on its own merits.
37. Regarding additional interest on the Interest Amount, this shall be at the base rate for the time being quoted by the Bank of England between 1 February 2020 and the date of settlement. I do not consider that there are any exceptional circumstances that merit a higher rate.
38. Regarding Mr S' claim for an award for non-financial injustice, I note that he has not provided any contemporaneous evidence to support this claim. The onus is on Mr S to provide evidence to show that the work he undertook and the time he spent in dealing with his complaint caused him, at the very least, significant distress and inconvenience.
39. The available evidence shows that during the period when the Contribution had been transferred to Invest Bank in error, it was Investec Wealth that actively corresponded with Curtis Banks to resolve the problem. So, if Investec Wealth incurred additional costs for dealing with this issue, it can seek recovery of these costs directly from Curtis Banks. While I understand that Mr S would have been worried and anxious to know the whereabouts of the Contribution, the issue was resolved within a week.

40. This is not to say that Mr S has not been inconvenienced by Curtis Banks' error. However, I have seen no evidence to demonstrate that Mr S has suffered significant distress and inconvenience, which would justify an award for non-financial injustice.

41. I uphold this complaint in part.

Directions

42. Within 28 days of the date of this Determination, Curtis Banks shall:-

- Pay Mr S the Interest Amount by calculating interest on the Contribution that was transferred to Investec Wealth on 31 January 2020. The rate of interest shall be 8% per annum simple and calculated for the period from 21 to 31 January 2020.
- Pay Mr S interest on the Interest Amount, such interest to be calculated at the base rate for the time being quoted by the Bank of England between 1 February 2020 and the date of settlement.

Anthony Arter CBE

Deputy Pensions Ombudsman
16 November 2023

Appendix 1

43. Relevant sections of the SIPP's Terms and Conditions that detail the requirement for contributions to be accepted into the SIPP.

"4 Contributions

...

- 4.6 Contributions may be single contributions or regular contributions and our contribution form must be fully completed in order for us to accept the contribution. Single contributions must be paid by cheque or direct credit. Regular contributions must be paid by direct debit and must quote the SIPP reference number in the payment narrative.

...

- 4.10 We will only act on an investment instruction when the contribution received is in a cleared funds state."

Appendix 2

44. Relevant extracts of the Pension Schemes Act 1993

“151A Interest on late payment of benefit

Where under this Part the Pensions Ombudsman directs a person responsible for the management of an occupational or personal pension scheme to make any payment in respect of benefit under the scheme which, in his opinion, ought to have been paid earlier, his direction may also require the payment of interest at the prescribed rate.”

Appendix 3

45. Relevant extracts of The Personal and Occupational Pension Schemes(Pensions Ombudsman) Regulations 1996

“Payment of interest on late paid benefit

6. (1) For the purposes of section 151A of the 1993 Act (interest on late payment of benefit), the prescribed rate of interest shall be the base rate for the time being quoted by the reference banks.
- (2) In paragraph (1) above—
 - (a) “base rate” means the rate for the time being quoted by the reference banks as applicable to sterling deposits or, where there is for the time being more than one such base rate, the rate which, when the base rate quoted by each bank is ranked in a descending sequence of four, is first in the sequence; and
 - (b) “reference banks” means the four largest persons for the time being who—
 - (i) have permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits,
 - (ii) are incorporated in the United Kingdom and carrying on there a regulated activity of accepting deposits, and
 - (iii) quote a base rate applicable to sterling deposits.”

Appendix 4

46. Relevant extracts of the Pension Schemes Act 1993

“151 Determinations of the Pensions Ombudsman.

- (1) Where the Pensions Ombudsman has conducted an investigation under this Part he shall send a written statement of his determination of the complaint or dispute in question—
 - (a) to the person by whom, or on whose behalf, the complaint or reference was made, and
 - (b) to any person (if different) responsible for the management of the scheme to which the complaint or reference relates]F2...

and any such statement shall contain the reasons for his determination.

- (2) Where the Pensions Ombudsman makes a determination under this Part or under any corresponding legislation having effect in Northern Ireland, he may direct any person responsible for the management of the scheme to which the complaint or reference relates to take, or refrain from taking, such steps as he may specify in the statement referred to in subsection (1) or otherwise in writing.”