

Ombudsman's Determination

Applicant	Miss E
Scheme	Curtis Banks Self-Invested Personal Pension (the SIPP)
Respondent	Curtis Banks Ltd (Curtis Banks)

Outcome

1. Miss E's complaint against Curtis Banks is partly upheld. To put matters right, Curtis Banks shall pay Miss E the amount of £70.24, together with interest to be calculated at the base rate for the time being quoted by the Bank of England between 30 January 2020 and the date of settlement.

Complaint summary

2. Miss E has complained that Curtis Banks caused delays in the transfer of her pension contribution from the SIPP to Investec Wealth & Investment Limited (**Investec Wealth**), with the result, that the investments were purchased at a later date.

Background information, including submissions from the parties

3. Miss E held the SIPP, which was administered by Curtis Banks and the investments in the SIPP were managed by Investec Wealth.
4. On 8 January 2020, Investec Wealth sent an email to Curtis Banks and informed it that Miss E intended to pay a pension contribution of £40,000 (**the Contribution**) into the SIPP. Investec Wealth requested information about the best way to do this.
5. On the same date, Curtis Banks replied that Miss E needed to complete a Contribution Form and submit it by post to its Bristol office. Alternatively, she could submit it using Curtis Banks' online portal.
6. On 14 January 2020, Investec Wealth sent Miss E's completed Contribution Form to Curtis Banks by email and asked it to check that it had been completed correctly.
7. On the same date, 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 "these forms" by email.

8. On 17 January 2020, Investec Wealth sent a copy of the 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.
9. On 20 January 2020, Curtis Banks replied that the Contribution Form did not show the Contribution, so this needed to be added before sending the form by post.
10. Investec Wealth posted the fully completed Contribution Form to Curtis Banks on the same date.
11. On 21 January 2020, Curtis Banks confirmed to Investec Wealth that it had received the Contribution. Investec Wealth asked Curtis Banks what was required for the Contribution to be transferred to Miss E's investment portfolio.
12. 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.
13. Between 23 and 28 January 2020, Investec Wealth and Curtis Banks entered into further correspondence because the Contribution had not been transferred to Investec Wealth.
14. On 29 January 2020, Curtis Banks confirmed that Miss E's investment instructions, which were shown in the Contribution Form, had not been actioned. Curtis Banks apologised for this and confirmed that the Contribution money would be transferred to Investec Wealth on the same date.
15. On the same date, Investec Wealth confirmed receipt of the money.
16. On 3 February 2020, Investec Wealth complained to Curtis Banks on behalf of Miss E, regarding the delay in transferring the Contribution for investment.
17. On 31 July 2020, Curtis Banks responded to the complaint. It said:-
 - On 17 January 2020, it informed Miss E that it had received the Contribution. On the same date, Miss E informed Curtis Banks that the money was to be sent to Investec Wealth for investment. Curtis Banks could not do this until it had received a Contribution Form from Miss E, which it received on 21 January 2020.
 - It was unacceptable that Curtis Banks did not complete the transfer of the Contribution to Investec Wealth until 29 January 2020. In accordance with the Financial Ombudsman Service (**FOS**) compensation guidelines, Curtis Banks had calculated interest at the rate of 8% per annum, which resulted in a loss of £70.24. This loss was the result of a delay of eight calendar days.
18. Miss E did not accept Curtis Banks' offer.
19. On 20 July 2021, Miss E transferred the value of the SIPP to another pension arrangement.
20. In her submissions to The Pensions Ombudsman (**TPO**), Miss E said in summary:-

- The Contribution was sent to Curtis Banks on 14 January 2020, using the Bankers' Automated Clearing System (**BACS**). Curtis Banks would have received it by no later than the next day. She had already given her instructions to transfer the Contribution via a secure message, on 17 January 2020. Curtis Banks should have sent the money to Investec Wealth immediately after receiving her instructions.
- She did not have use of the money for a period of two weeks. She and Investec Wealth spent several hours trying to resolve the matter. Since then, she spent more time chasing a response to her complaint and a resolution. Even though Curtis Banks admitted its error, no satisfactory resolution had been achieved.
- This was not the first time she experienced poor administration by Curtis Banks. In 2017, it did not process a pension contribution paid by cheque from her employer for a period of three weeks after it was sent. As a result, the contribution was carried into the next tax year.
- She agreed with the fundamental principle of calculating her financial loss by means of an interest rate calculation. However, she disputed the period of delay identified by Curtis Banks. The relevant bank statement showed that the Contribution was debited to her employer's account the day following the payment instruction, which was on 15 January 2020. So, it took two weeks for Curtis Banks to transfer the money to Investec Wealth. In her view, the amount of interest offered should be doubled.
- She sought financial compensation for the loss of use of the money, as well as compensation for the time she spent dealing with the matter and the inconvenience she had suffered. In her 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 she 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.

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

- It accepted that there was a delay in acting on Miss E's instructions to transfer the Contribution to Investec Wealth. The Contribution cleared her SIPP account on 20 January 2020 and her Contribution Form was received on 21 January 2020. The money should have been sent to Investec Wealth following receipt of the Contribution Form.
- It apologised for the delay in transferring the money to Investec Wealth. It had not been able to establish the precise reasons for the delay. Curtis Banks was aware and had acknowledged receipt of both the Contribution and Miss E's instructions. It would appear that the delay was a result of an individual administrative error.

- It did not have direct access to Miss E's investment account, in order to establish what investments were made following receipt of the Contribution by Investec Wealth. Because of this, it calculated loss based on 8% interest per annum pro rata which, in its view, was fair and reasonable.
- Alternatively, it was prepared to obtain records of the investments Miss E made using the Contribution once the funds were received by Investec Wealth. It would then calculate what investments Miss E could have purchased if the money had been transferred to Investec Wealth at an earlier date and offer the difference to Miss E. However, it was not prepared to compensate Miss E for any perceived investment loss, which was the investment loss arising by mirroring any further investments and/or fund switches Miss E made with the Contribution, between 29 January 2020 and the current date. This was because, in Curtis Banks' view, there was no evidence that the Contribution would have been used in a certain way and Miss E could not retrospectively confirm what she would have done with the additional funds.

Adjudicator's Opinion

22. Miss E'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, Miss E did not provide any evidence to show that she 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 Miss E's current complaint.
- The SIPP's Terms and Conditions stated that, in order 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 the completed Contribution Form on 21 January 2020. So, even though it had already received Miss E's instructions and the Contribution prior to that date, it could not transfer the Contribution to Investec Wealth until it was in receipt of the Contribution Form. In the Adjudicator's opinion, Curtis Banks had caused no delays up to that point, as it was helping Investec Wealth with the correct completion of the Contribution Form.
- 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 transfer took place on 29 January 2020, thus delaying investment of the Contribution. So, she might have suffered a financial injustice if, for example,

she could have purchased more units in her intended investments, had there been no delay.

- Initially, the Adjudicator asked Curtis Banks to compare the transfer value of Miss E's SIPP as at 20 July 2021, with the notional transfer value, had the Contribution been transferred to Investec Wealth on 21 January 2020. This comparison would have taken into consideration any fund switches in the investments Miss E actually invested in. If the notional transfer value was higher than the actual transfer value, the Adjudicator proposed that Curtis Banks should pay the difference between the two values, together with interest for the period 21 July 2021 to the date of settlement.
- However, Curtis Banks and Miss E disagreed with the Adjudicator's redress methodology. In Curtis Banks' view, any loss arising from this methodology would be a perceived loss. This is because there was no evidence that Miss E'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 Miss E would have made the same decisions, had the transfer been made earlier. Miss E, agreed with Curtis Banks. She added that it would not be possible to fairly assess the investment loss, especially when all investments were made by Investec Wealth. In addition, Miss E had parted company with both Curtis Banks and Investec Wealth, had not retained details of her investments in the SIPP, and no longer had any means of accessing these details.
- After considering the parties' comments, the Adjudicator accepted that it would be difficult to calculate any investment loss accurately, given that Miss E had transferred her SIPP and was no longer a customer of 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' offer, to pay interest at the rate of 8% between 21 and 29 January 2020, was appropriate in the circumstances. This offer had resulted in an amount of £70.24.
- However, it was the Adjudicator's opinion that additional interest should be added to the £70.24, for the period between 30 January 2020 and the date of settlement. The Adjudicator pointed out that, while the FOS could award interest at the rate of 8%, my prescribed rate of interest was different. The basis upon which I awarded interest in respect of late payment of benefits was specified in section 151(A) of the Pensions Act 1993 (see Appendix 2). If I 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 concerning the rate applying.
- The Adjudicator added that, although the regulations were silent on the point, it was considered that it was implicit that the basis applying was simple interest. This was because The Pensions Ombudsman (**TPO**) took a consistent approach

in the application of statutory power 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 similar rate as applied by the courts.

- The Adjudicator considered that, if Miss E's complaint was referred to the Ombudsman, it would be 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 amount of £70.24, for the period 30 January 2020 to the date of settlement, should reflect the rate awarded by the Ombudsman rather than the FOS. 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 Miss E's request for compensation towards non-financial injustice, the Adjudicator noted that Miss E had provided no evidence to show the time spent dealing with Curtis Banks and to demonstrate the inconvenience this issue had caused her. While Miss E had described the anxiety and upset one would experience if they were informed that £40,000 of their money had gone missing, this was not what happened in her case. There was no evidence that her contribution was misplaced or was sent to an unconnected party. The Adjudicator concluded that the onus was on Miss E to provide sufficient evidence to support her claim for non-financial injustice. As she had not provided any evidence to show the time and effort she said she spent dealing with this complaint, the Adjudicator's opinion was that Curtis Banks' error did not cause Miss E significant distress or inconvenience.

23. Curtis Banks accepted the Adjudicator's Opinion. Miss E did not respond to the Adjudicator's Opinion and has not provided any further comments.

24. As Miss E did not respond to the Adjudicator's Opinion, her complaint was passed to me to consider. Miss E was invited to submit her comments prior to the complaint being referred to me. I note that Miss E has not provided any comments. The outcome of Miss E's complaint has not changed. I agree with the Adjudicator's Opinion.

Ombudsman's decision

25. Miss E's position is that Curtis Banks caused a longer delay in the transfer of the Contribution to Investec Wealth than it has calculated.

26. 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 on the following date. I am satisfied that Curtis Banks should have transferred the Contribution to Investec Wealth on 21 January 2020, so any award calculation shall be calculated from this date onwards.
27. I note the parties' comments regarding the difficulty in calculating any investment loss Miss E might have suffered as a result of Curtis Banks' delay in sending the Contribution to Investec Wealth. Under the circumstances, I am satisfied that an award on an interest rate basis would be more appropriate, given that both parties agree that this would be the best method of calculating the award in the circumstances. So, I need to decide on the interest rate to be applied to the calculation of the award.
28. Section 151(2) of the Pensions Act 1993 gives me 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). However, this would be in exceptional circumstances.
29. As both parties have agreed to the rate of interest to be applied for calculating Miss E's financial loss (8% per annum simple), I do not intend to award a lower rate of interest on this occasion. I am satisfied that the award resulting from this calculation is £70.24. However, the decision to award the rate of 8% should not be seen as setting a precedent for similar complaints. Each complaint is considered on its own merits.
30. Regarding additional interest payable on the sum of £70.24, this shall be at the base rate for the time being quoted by the Bank of England between 30 January 2020 and the date of settlement. I do not consider that there are any exceptional circumstances that merit a higher rate.
31. Regarding Miss E's claim for an award for non-financial injustice, I note that she has not provided any contemporaneous evidence to support this claim. The onus is on Miss E to provide evidence to show that the work she undertook and the time she spent in dealing with her complaint caused her, at the very least, significant distress and inconvenience. This is not to say that Miss E has not been inconvenienced by Curtis Banks' delay. However, I have seen no evidence to demonstrate that Miss E has suffered significant distress and inconvenience, which would justify an award for non-financial injustice. In addition, Curtis Banks rectified the error relatively quickly.
32. I uphold this complaint in part.

Directions

33. Within 28 days of the date of this Determination, Curtis Banks shall:-
 - Pay Miss E £70.24, which is the financial loss she has suffered.

CAS-53398-K6J8

- Pay Miss E interest on the amount of £70.24, such interest to be calculated at the base rate for the time being quoted by the Bank of England between 30 January 2020 and the date of settlement.

Anthony Arter CBE
Deputy Pensions Ombudsman
13 November 2023

Appendix 1

34. 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

35. 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

36. 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

37. 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.”