

Ombudsman's Determination

Applicant	Mr Graham Burton
Scheme	AXA Retirement Wealth Account (the Plan) Policy Reference 1025706
Respondents	AXA Wealth (AXA) St James' Place Wealth Management (St James' Place)

Complaint Summary

Mr Burton complains that he has suffered a financial loss because:

- St James' Place did not pay the transfer value available from his drawdown pension plan with them into the Plan on a timely basis; and
- AXA did not invest the transfer value as soon as possible.

He contends that it was unreasonable for:

- St James' Place to take eight working days to send the transfer payment once they informed AXA that they would be using the Clearing House Automated Payment System (**CHAPS**) method to do so; and
- AXA to postpone investing the transfer funds until St James' Place had supplied them with his P45 in order to apply the correct tax code to his income payments from the outset.

Summary of the Ombudsman's Determination and reasons

The complaint should be upheld against both AXA and St James' Place.

In my judgement, the failure of St James' Place to ascertain on a timely basis that their transfer cheque had been mislaid during transit through the bank clearing system after

PO-2447

AXA notified them that it had bounced contributed to delay in the completion of the transfer process. I consider this failure to be maladministration on the part of St James' Place.

I also consider that AXA failed to adequately explain to Mr Burton (via his IFA) at the start of the transfer process their new policy of having to obtain his P45 before investing the transfer value in the Plan and paying any drawdown income. In light of this, it is my view that AXA should have given Mr Burton the opportunity to decide whether or not he wanted the transfer value invested immediately on receipt.

The maladministration identified above on the part of AXA and St James' Place has caused Mr Burton financial loss for which he should be compensated.

Detailed Determination

Material facts

1. On 15 August 2012, AXA informed St James' Place that Mr Burton wished to transfer the benefits available to him from his St James' Place drawdown pension plan into the Plan. AXA enclosed a "Transfer Details Form" with their letter for completion and return by St James' Place with or before making the transfer payment. In their letter AXA said that without the completed form they might not be able to invest the transfer payment on receipt.
2. AXA also enclosed completed discharge forms, that is. St James' Place's "Receiving Scheme/Policy Declaration" and "Request for Transfer Payment". Mr Burton had signed the latter form on 10 August and by doing so, had requested that the transfer value should be paid by cheque to AXA.
3. St James' Place received Mr Burton's transfer request on 20 August and disinvested the assets held in his drawdown income plan using prices effective on 21 August.
4. St James' Place sent AXA on 28 August a cheque for £191,046 representing the current transfer value available to Mr Burton. This payment was exclusive of Mr Burton's September income drawdown instalment which St James' Place would pay.
5. St James' Place had intended to send Mr Burton his P45 shortly after making this payment on 1 September so that it would be taken into account on the P45.
6. AXA received the cheque on 30 August and passed it to their Finance Department for banking so that the monies could be credited to their suspense bank account.
7. AXA's current policy is to invest a transfer value and pay income only upon receipt of a P45. By doing so, AXA ensure that they apply the correct tax code to income payments from the beginning. This policy was in force at the time of Mr Burton's transfer. AXA consider this policy to be in Mr Burton's best interest despite it not being a requirement of HM Revenue and Customs (**HMRC**).
8. AXA asked St James' Place to supply them with a copy of Mr Burton's P45. St James' Place replied on 4 September that they would send Mr Burton his P45 within five working days but due to an internal administrative error, this did not happen.

9. AXA's Finance Department received notification from their bank on 5 September that the cheque had bounced. They did not, however, immediately inform the New Business Team (which would be responsible for setting up Mr Burton's income payments) or St James' Place what had happened to the cheque.
10. St James' Place cancelled the transfer cheque because their bank told them that it had been lost in the clearing process. They did not, however, tell AXA what they had done at the time.
11. St James' Place first became aware of their oversight to send Mr Burton his P45 when AXA chased them on 12 September for a copy. They recorded this error as an "internal breach" and sent Mr Burton his P45 on 19 September.
12. AXA received a copy of the P45 via the IFA on 25 September. Upon receipt, their New Business Team tried to invest the transfer payment and discovered that the cheque had bounced.
13. AXA contacted St James' Place to inform them what had happened to the transfer cheque. According to AXA's records:
 - St James' Place telephoned them on 26 September to say that it had been cancelled in error and they would re-send the transfer value using the CHAPS method within three working days if AXA provided them with their bank details;
 - AXA complied with St James' Place's instructions;
 - St James' Place called back later on the same day to inform them that the cheque had cleared the banking system on 3 September;
 - having received conflicting information about the cheque, AXA notified St James' Place that their Finance Department would look into this matter;
 - AXA informed St James' Place on 3 October that the cheque had bounced and asked them for details of the bank account into which the cheque had supposedly been credited so that they could check whether payment had been made correctly;
 - St James' Place replied on 4 October that the cheque had in fact been lost in clearing and apologised for the confusion which they had caused; and

- St James' Place requested their bank details again and notified them on 5 October that the transfer value would be paid on 8 October by CHAPS.
14. AXA applied the payment to their bank account on 9 October and invested it in accordance with Mr Burton's instructions on 11 October (in the Blackrock Gold and General and the Allianz Gilt Yield Funds).
 15. Mr Burton complained to AXA that their administrative practice of postponing investment of the transfer value until receipt of his P45 was unreasonable. He said that it was common practice within the pensions industry to invest a transfer value immediately on receipt. Although he could understand why AXA would want to deferring paying income from the Plan without the P45, in his opinion, it was unacceptable that they did not invest the transfer value in line with his instructions as soon as possible.
 16. Mr Burton contends that he has suffered a financial loss because of AXA's failure to invest the transfer value on a timely basis. He invested £76,418 (i.e. 40% of the transfer value) in the Blackrock Gold and General Fund on 9 October and purchase 19,848.90 units at £3.85 per unit. If the purchase had taken place on 30 August when the unit price had been £3.335, he could have purchased 22,914.02 units, i.e. 3,065.12 more units.
 17. AXA admitted to Mr Burton that they should have notified St James' Place immediately that the cheque had bounced when they found out on 5 September. But taking into account that St James' Place needed eight working days to re-send the transfer value once the matter was brought to their attention, in their view, they should have been able to invest it two working days after receiving the P45 if the transfer had proceeded smoothly.
 18. AXA informed Mr Burton that they had carried out a redress calculation using the notional and actual investment dates of the transfer value of 27 September and 11 October respectively and determined that he had incurred a financial loss of £1,088.62. AXA also told him that they had already arranged for a correction of the number of units held in the Plan for the Fund to compensate him for his loss.
 19. Mr Burton was dissatisfied with their response and referred his complaint to me.

Summary of Mr Burton's position

20. St James' Place took an unacceptable amount of time to send the transfer cheque to AXA after having disinvested the drawdown pension plan assets on 21 August.
21. Pension transfers are now generally processed using CHAPS which is a fast and secure payment method.
22. AXA should have provided St James' Place with their bank account details automatically so that the initial transfer payment could have been made by CHAPS. St James' Place could also have asked AXA to supply this information when it was not supplied.
23. AXA and St James' Place should have arranged for the transfer payment to be made by CHAPS on the day AXA found out the transfer cheque had bounced.
24. The Financial Conduct Authority (**FCA**) best execution rules states that "a firm must take all reasonable steps to obtain when executing orders, the best possible result for its clients taking into account the execution factors..." In his opinion, taking eight working days to complete a pension transfer by CHAPS (in addition to the delays caused by the lost cheque and the P60 issue) would not be deemed acceptable by the FCA.
25. Both AXA and St James' Place did not have adequate systems in place to monitor the status of his pension funds whilst the transfer was ongoing.
26. He has also suffered distress and inconvenience dealing with this matter for which he would like to be suitably compensated by AXA and St James' Place.

Summary of the position of AXA Wealth

27. They did not ask St James' Place to provide them with Mr Burton's P45 in their letter of 15 August because they were unaware that Mr Burton was receiving income from the transferring plan at that stage.
28. They used to invest client monies without having received the P45 and apply the default emergency "BR" code to tax income payments. By doing so, some of their clients complained at having to subsequently rectify their income tax position with HMRC. They consequently changed their policy to only invest a transfer value on receipt of the relevant P45 to avoid the risk of paying out income using the incorrect tax code (if the payments had been set up by mistake). They only now use the

emergency tax code in cases where the client has a drawdown to drawdown transfer and has not been taking any income from the transferring scheme.

29. They discussed their new process and reasons behind the P45 requirement verbally with the New Business Team. They cannot consequently provide any written evidence corroborating the existence of this policy.
30. Although it is no longer their usual practice, they appreciate that they could have invested Mr Burton's transfer value as soon as possible and added the tax code/information from the P45 to his records afterwards. They will review this process following the outcome of my investigation into Mr Burton's complaint.
31. In their opinion, it was ultimately the failure of St James' Place to provide them with a copy of Mr Burton's P45 and re-send the transfer value payment to them on a timely basis which delayed Mr Burton's investment in his chosen funds for the Plan.
32. They have calculated that if the transfer value had been invested on 7 September (instead of 11 October), the current value of the Plan would be £3,173 higher than it current is.
33. St James' Place should contribute to their administrative costs of adding units to the Plan if I decide that this complaint should be upheld against them too.

Summary of the position of St James's Place

34. They sent Mr Burton's transfer cheque to AXA on 28 August which was within their turnaround time for such transactions of ten working days.
35. They will only send a transfer payment by CHAPS, if specifically asked to do so. Mr Burton did not do this so payment was made by cheque (as shown on the "Request for Transfer Payment" form).
36. They were unaware that there had been a problem with the cheque until AXA told them on 25 September. They informed AXA that, according to their records, the cheque had cleared their account on 3 September. They were therefore unable to re-send the transfer value to AXA until this discrepancy was resolved.
37. They accept that they were responsible for a delay in providing AXA with Mr Burton's P45 to AXA and would like to apologise to him for this.
38. They do not agree with AXA's request that they should pay 50% of AXA's administration costs to add units to the Plan because:

- the bank which lost the transfer cheque was also at fault in this case; and
- they have spent roughly the amount of administration time dealing with this matter as AXA (at no cost to any party).

Conclusions

39. AXA say that they introduced their current policy of obtaining a client's P45 before investing his/her funds and paying any drawdown income because they consider it is in their client's best interests to have his/her income taxed correctly from the outset.
40. AXA are unable however to provide me with any evidence substantiating their new policy for inspection. I have also seen no evidence that they lucidly explained to Mr Burton the reasons behind their policy decision (via his IFA) that they would not invest the transfer value until after receiving his P45. In light of this, I consider it only fair that AXA should have given Mr Burton the opportunity to decide whether he would like the transfer value invested immediately (with an embargo on income payments until receipt of his P45) or both investment of the transfer value and payment of income deferred. I therefore consider the failure by AXA to adequately explain the new policy to Mr Burton at the start of the transfer process and to offer him the choice of when the transfer payment should be invested constitutes maladministration on their part.
41. It is a clear advantage of AXA's policy that Mr Burton did not subsequently have to reclaim any overpaid income tax or pay additional income tax owed to HMRC which he would have had to if AXA had deducted income tax using the emergency "BR" tax code.
42. But this policy also potentially has a significant drawback as Mr Burton discovered. Whilst his transfer value remained as cash in AXA's suspense bank account, Mr Burton was out of the market as the transfer was taking place. This might have worked in Mr Burton's favour if the market fell but it rose and he did not therefore benefit from any investment growth while he held cash. I cannot therefore agree with AXA's view that their current policy is wholly in Mr Burton's best interests.
43. Furthermore, it is a generally accepted practice amongst other pension providers to apply the emergency "BR" code to income payments if the P45 is unavailable. The reason given by AXA as to why they generally no longer do this is understandable.

But not all of their clients are concerned at having to correct tax position with HMRC if the emergency tax code was applied. Some, like Mr Burton, would have welcomed AXA applying the emergency code if this allowed them to invest the transfer value as soon as possible.

44. Mr Burton considers that AXA should have been able to invest the transfer value on 30 August. I do not share his view. AXA received the transfer cheque on 30 August and if it had not been lost in the clearing process, the monies would only have been available for investment a few days later in September.
45. AXA was informed on 5 September that the cheque had bounced. It is unclear from the evidence how the cheque was lost during the clearing process. I am therefore wary of concluding that AXA should be blamed for this. But their failure to bring the bounced cheque to the attention of St James' Place until after receiving a copy of Mr Burton's P45 on 25 September was, in my view, further maladministration on the part of AXA. If AXA had done this, St James' Place would have been in a position to re-send the transfer payment to them much earlier.
46. St James' Place took eight working days to re-send the transfer payment after informing AXA on 26 September that they would do so within three working days using the CHAPS payment method. This delay, in my view, should be attributed to St James' Place because it was their mistake in telling AXA on 25 September that the transfer cheque had cleared their bank account (after being told that it had bounced by AXA) which caused it. If St James Place had not made this error, I consider that they ought reasonably to have re-sent the transfer value for investment by AXA in two working days.
47. But for those failures identified above, I think it likely that AXA would have been in a position to invest the transfer value two working days after 5 September, i.e. on 7 September.
48. My directions below are aimed at remedying the injustice which Mr Burton has suffered as a result of the maladministration on the part of both AXA and St James' Place. I am placing Mr Burton into the position he would have been in had AXA invested the transfer value received from St James' Place at the earliest opportunity.

PO-2447

49. I am also satisfied that Mr Burton has suffered some distress and inconvenience as a result of having to deal with this matter for which he should be modestly compensated by both AXA and St James' Place and have allowed for this in my directions below.

Directions

50. Within 14 days of the date of this determination, AXA shall provide Mr Burton and St James' Place with full details of:
- the number of units which would have been bought in the Blackrock Gold and General Fund and Allianz Gilt Yield Funds if the purchase had taken place on 7 September 2012; and
 - the current value of the Plan assuming that the investment had occurred on 7 September 2012
51. On receipt of the above information, St James Place shall pay AXA within 14 days, 50% of the current cost of providing Mr Burton with the correct number of units in the Blackrock Gold and General Fund and Allianz Gilt Yield Funds assuming that the purchase had taken place on 7 September 2012.
52. Within 14 days of receipt of this payment, AXA shall then pay the remaining 50% of the cost to make a further adjustment to the number of units held in Blackrock Gold and General Fund and Allianz Gilt Yield Funds for the Plan assuming that these units were purchased on 7 September 2012.
53. Within 28 days of the date of this Determination, AXA and St James' Place shall each arrange to pay Mr Burton £50 in recognition of the distress and inconvenience caused to him.

Jane Irvine

Deputy Pensions Ombudsman
29 May 2015