

Determination by the Deputy Pensions Ombudsman

Applicant	Mr Clive Thomas
Scheme	The Sippcentre SIPP (the SIPP)
Respondent(s)	Sippcentre

Complaint Summary

Mr Thomas' complaint against Sippcentre is that they delayed in transferring the SIPP to another SIPP arrangement with Alliance Trust and that their delay caused him financial loss.

Summary of the Deputy Ombudsman's determination and reasons

The complaint should be upheld against Sippcentre because their admitted delay has caused Mr Thomas financial loss over and above the amount they have offered him as compensation.

DETAILED DETERMINATION

Material Facts

1. Sippcentre emailed Mr Thomas' investment partners Seven Investment Management, (**7IM**) on 4 April 2013 requesting that they close the SIPP account and transfer the proceeds to the SIPP cash account.
2. Sippcentre received £384,174.52 from 7IM on 11 April 2013 but say that they did not receive any confirmation of the payment or whether the account was closed.
3. Sippcentre contacted 7IM on 23 April 2013 for confirmation that the account was closed.
4. On 24 April 2013 7IM informed Sippcentre that the account could not be closed until mid-May 2013.
5. Sippcentre sent a transfer payment of £386,174.52 representing the full balance of the SIPP via CHAPS to Alliance Trust on 7 May 2013.
6. Mr Thomas wrote to Sippcentre on 12 July 2013 providing his own calculation of the financial loss caused by the delay by Sippcentre. His calculations were based on a price comparison of the investments he purchased immediately on 8 May 2013, the day after the transfer to Alliance Trust was completed compared to the prices on 9 April 2013 the date he says the SIPP should have been transferred had there not been a delay. His calculation showed a total loss on investments during this period of £22,183.99 plus £994.46 for lost dividend payments. He also said that Sippcentre should pay him an additional £250 for the distress and inconvenience caused by their delay and the time he took in collating his figures.
7. Sippcentre wrote to Mr Thomas on 9 August 2013 saying ,

“...In order to ensure that you have not been disadvantaged, we would like to offer you interest of 2.5% on the transfer amount, for the period of the delay. We consider this to be a reasonable rate, being 2% above the Bank of England Base Rate.

I have calculated the delay to be 19 days. This period is based upon the date the funds should have been transferred, 18 April 2013, and the date they were transferred, 7 May 2013. Based on the amount transferred of £386,174.52, this equates to £502.55 in interest.

We would like to offer you £502.55 compensation for the delay and an additional £75 for any inconvenience and...distress this may have caused..."

8. My investigator has asked Alliance Trust to establish the difference in the costs of purchasing Mr Thomas's investments in his Alliance Trust SIPP on 18 April 2013 and on 8 May 2013.
9. Alliance Trust subsequent calculations of 20 November 2014 show that it would have cost Mr Thomas £12,951.46 more to purchase the same number of units on 8 May 2013 than it would have cost him on 18 April 2013.

SIPP Provisions

10. Terms and Conditions for the Sippcentre SIPP

"10 Liability

10.4...neither you nor we shall be liable ...in any event for:

10.49 loss arising from delays in the processing of transfers."

Summary of Mr Thomas' position

11. In March 2013 he instructed Sippcentre to transfer his SIPP funds to Alliance Trust. His SIPP assets were liquidated on 4 April 2013 but were not transferred until 7 May 2013.
12. He says that with electronic transfer arrangements the transfer of his SIPP funds should have been almost immediate. Therefore the transfer should have been completed by 9 April 2013, following the liquidation of his SIPP assets on 4 April 2013.
13. The compensation amount should be based on the actual difference in the price of his investments from when he should have been able to purchase them on 9 April 2013 to date he was actually able to purchase them on 8 May 2013, together with associated loss of dividend for the period.
14. The assets he purchased on 8 May 2013 had increased in cost due to a rising market. Had his funds transferred in a timely manner he would have purchased the same funds significantly cheaper.

15. He says that £502.55 compensation offered by the Sippcentre is insufficient because according to his calculations the financial loss amounts to £23,627.75.
16. Sippcentre's delay in transferring his SIPP caused him distress and inconvenience.

Summary of Sippcentre's position

17. Under clause 10.49 of the Sippcentre SIPP terms and conditions, liability for loss that arises as a result of delays in processing transfers is excluded. Although in trying to settle the case they have not sought to rely on their strict legal rights, this is something that should be considered. They do not consider that the exclusion causes a significant imbalance in the rights and obligations of the parties because the nature of transfers is that they are not entirely within Sippcentre's control.
18. They calculate the period of the delay to be from the date Alliance Trust could have received the SIPP funds (18 April 2013) to the date the funds were transferred (7 May 2014)
19. Once they instruct the closure of a SIPP fund they aim to chase the investment partner once a week until it is completed. They instructed 7IM to close the SIPP on 4 April 2013 and should have contacted them again on 11 April 2013.
20. Had they contacted 7IM, on 11 April 2013 it is reasonable to assume that they would have provided the relevant information to progress the transfer. It is also reasonable to assume that Sippcentre would have been instructed to transfer at this point. Therefore had Sippcentre acted in a timely manner then the transfer of the SIPP funds to Alliance Trust would have occurred on 18 April 2013, five working days after the funds were received. The 18 April 2013 date was an arbitrary date chosen by them to reflect the goodwill "gesture" made.
21. Once they receive funds they aim to complete the transfer within 5 working days. However, the 5 working days turnaround is an internal standard. Sippcentre do not have published service level agreements. They did not receive the funds from 7IM until 11 April 2013; therefore the transfer could not have taken place on 9 April 2013 as suggested by Mr Thomas.

22. Sippcentre's offer of compensation of £502.55 representing interest on the transfer funds at 2.5 % for the period of the delay was fair. The reason why they used this method to calculate the compensation is that they are unable to verify what investments Mr Thomas would have made had the funds been transferred on 18 April 2013 or what date he would have made them. So it was impossible to determine a level of compensation based on loss of value.

Conclusions

23. Sippcentre have admitted that they were at fault in delaying the transfer of the SIPP to Alliance Trust. The delay by Sippcentre is maladministration by them.
24. Clause 10.4.9 of the Sippcentre terms and conditions purports to exclude liability for 'loss arising from delays in the processing of transfers.' Sippcentre has not, so far in its dealings with Mr Thomas, sought to rely on this clause to claim that it has no liability to him – rather it has offered a settlement based on its view of how long it delayed and the amount of loss this delay caused to Mr Thomas. Nevertheless, the clause was raised in a letter to this office on 30 May 2014, so needs to be considered.
25. Although Sippcentre are responsible for maladministration, clause 10.4.9 then needs to be considered in terms of liability. One might have expected Sippcentre to decline to make any settlement offer if it was satisfied that it had no legal liability, given it was clear that alleged loss of investment value was the main thrust of Mr Thomas' complaint.
26. This may be in the spirit of compromise and settlement but also because, at first blush, the purported exclusion appears to be of a type that has been struck down before. I note, in particular:
 - a) the very wide nature of its wording;
 - b) the absence of any specific reference to exclusion for negligence and yet drafted widely enough to purport to cover this and other reasons for delay;
 - c) the fact that it attempts to fully exclude rather than limit;
 - d) that it would appear to leave a consumer with no remedy for circumstances beyond his control but potentially entirely within the control of the business; and

e) the relative bargaining positions of the parties at the time the contract was entered into.

All of which would appear to leave a significant imbalance in the parties' rights and obligations, such that it is likely to be unfair for all losses, no matter how negligent Sippcentre might be in a particular situation, to be excluded from recovery.

27. Taking all the above and the particular circumstances of this case into account, I consider that the clause should not protect Sippcentre from the reasonably foreseeable consequences to Mr Thomas of its failings.
28. There is disagreement between Sippcentre and Mr Thomas about the period of the delay and the method to be used in calculating compensation for the loss caused by the delay.
29. Mr Thomas asserts that the compensation should be based on the actual difference in the price of his investments from when he should have been able to purchase them in his Alliance Trust SIPP on 9 April 2013 to date he was actually able to purchase them on 8 May 2013, together with associated loss of dividend for the period.
30. Sippcentre say that they have a 5 working day turnaround time. I note that they have subsequently said that this was an internal standard which was not published. However, I think that the 5 day turnaround time originally suggested by Sippcentre can be reasonably applied to this case. They themselves have deemed it an appropriate time scale to use in the calculations of the period of the delay in question. Sippcentre instructed 7IM to close the SIPP on 4 April 2013, but by their own admission failed to contact them again on 11 April 2013. They say that had they contacted 7IM on 11 April that they would have been instructed to transfer at this point. I think that is a reasonable assumption to make, bearing in mind that they had not received a reply from 7IM to their contact of 4 April 2013. Sippcentre assert that had they acted promptly the transfer would have been completed on 18 April 2013. I think that this is a reasonable assertion as the transfer would have been completed within 5 working days of them receiving the transfer instruction from 7IM. I do not consider that a transfer completion date of 9 April 2013 as

suggested by Mr Thomas was reasonable, particularly as Sippcentre had not received the funds from 7IM until 11 April 2013.

31. I therefore consider that the starting point for the delay was 18 April 2013. Sippcentre have not contested that they were at fault in delaying the transfer beyond this point. So, I think that the appropriate period for the compensation calculation should be from the 18 April 2013 the date it was feasible for the transfer to be completed to 8 May 2014, the date Mr Thomas was reasonably able to purchase his chosen investments in his account at Alliance Trust after the actual transfer.
32. I note that Sippcentre say that the reason why they used their method of calculating the compensation is that they are unable to verify what investments Mr Thomas would have made had the funds been transferred on 18 April 2013 or what date he would have made them. I therefore think that the appropriate method for calculating the compensation to put Mr Thomas back in the position that he should be in had it not been for the delay would be for Alliance Trust to establish the difference in the costs of purchasing his investments on 18 April 2013 and on 8 May 2013 as instigated by my investigator.
33. Alliance Trust's calculations of 20 November 2014 show that Mr Thomas has suffered financial loss because of the delay. They calculated what units Mr Thomas purchased on 8 May 2013 and what units he could have purchased on 18 April 2013 had the funds been received earlier. Their calculation shows that in all but 1 of the funds Mr Thomas would have been able to purchase more units with his monies on 18 April 2013 than he actually received on 8 May 2013. In order to give the monetary value that this would have cost Mr Thomas they took the units that could have been purchased on 18 April 2013 and used the rate Mr Thomas actually received on 8 May 2013. This showed that it would have cost Mr Thomas an additional £12,951.46 to purchase the same number of units. In other words Mr Thomas' financial loss resulting from the delay is £12,951.46. I therefore uphold Mr Thomas' complaint against Sippcentre on the basis of his financial loss as calculated by Alliance Trust. I also consider it appropriate that Sippcentre should add interest on the £12,951.46 calculated using the base rate for the time being

quoted by the reference banks, from 18 April 2013 to 8 May 2013 as part of the over compensation. My directions below set this out.

34. Mr Thomas contends that the delay in question has caused him distress and inconvenience. I note that Sippcentre have offered to pay him an additional £75 regarding this. As the delay in question was less than a month I do not consider that Mr Thomas would have been caused significant distress and inconvenience. I therefore think that amount being offered by Sippcentre for distress and inconvenience was reasonable.

Directions

35. Within 28 days of the date of this determination, Sippcentre shall pay Alliance Trust the sum of £12,951.46 to be invested into his SIPP with them together with interest at the rate quoted for the time being by the reference banks from 18 April 2014 to the date of payment.
36. The Sippcentre shall also, within 28 days of the date of this determination, pay Mr Thomas £75 in compensation for the distress and inconvenience he has suffered.

Jane Irvine

Deputy Pensions Ombudsman

2 February 2015