DRN-4408154

The complaint

Mr B complains about failings by Intelligent Money Ltd (IM) including delay in moving money in his Self-Invested Personal Pension (SIPP).

What happened

Mr B says that as a result of IM failing to follow his instructions to move his money, he had lost around £8,400. He said his financial adviser gave instructions to remove his cash deposits to a new trading platform in early July 2022. He said IM failed to do this and failed to chase it up throughout August and September. He tried to call IM several times and left messages. The phone was not answered and the messages to call back were not actioned. Mr B said he was told the stock market was likely to dip below 7000 so he did not want to invest through his new platform until that happened. He would have liked to invest on 12 October 2022. The money was not available until 4 November 2022 by which time the stock market had risen substantially. IM confirmed they caused a loss and would compensate him. He wanted to be compensated on the basis that he would have invested on 12 October when the stock market was at 6890. Mr B said he would have invested in FTSE tracker funds so the relevant bench market was the FTSE.

IM said it accepted there had been delay. It calculated his loss based on the date it was asked to send the funds to the new platform which was in July 2022. It had no way of knowing how long the disinvestment would have taken so allowed 2 weeks and calculated the loss as if the funds were sent on 22 July 2022. It calculated the loss as around £1,800.

The investigator said Mr B first made contact on 8 July 2022. IM asked for clarification and this was done on 12 July 2022. IM chased the instructions to disinvest several times through to September 2022. The money arrived with the new platform on 4 November 2022. Mr B took advice from a financial adviser on 30 September 2022. IM offered to compensate Mr B as if his funds had been moved to the two funds recommended by the financial adviser on 22 July 2023. IM accepted there had been a delay so the investigator didn't consider this. Once instructions were clarified on 12 July it was reasonable to allow 10 working days for the transfer which would be 22 July 2022. But Mr B already had cash funds on his new platform and didn't invest after getting advice from the financial adviser. He could have invested but didn't. So the investigator didn't think the delay would have made a difference to his investment strategy. For those reasons the investigator thought the offer from IM was fair and reasonable.

Mr B didn't agree he said he didn't have cash funds to invest as suggested. He invested £100,000 in total in two FTSE tacker funds in June 2022. He then needed to get cash from IM to make further investments on the new platform. He supplied further evidence to support this.

The investigator said they had seen evidence to suggest that Mr B's intention was to invest once the FTSE fell below 7,000. This was confirmed in an email from Mr B to IM saying this. He had a pattern of doing this. For example he held cash on his platform in April 2022 but delayed investing until the FTSE fell to a much lower level in June 2022. The FTSE first fell below 7,000 on 27 September 2022 so it seemed reasonable to assume that the investment into the funds would have been instructed at that time. When Mr B made investments in June 2022 he invested into two FTSE tracker funds so it was reasonable to assume that he would have done the same in September 2022. However Mr B's money was still in cash and not invested to date. As Mr B had a duty to mitigate his loss any redress should distinguish between the loss due to IM's error and those that are now due to Mr B's delayed investment. The investigator proposed a method of redress that would achieve this.

Mr B said that the investigator's view was broadly in line with his view.

IM didn't comment further.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

IM accepts that it caused delay in the transfer of Mr B's money. I don't need to consider that further but can consider an award for the financial loss and for distress and inconvenience caused by the delay.

Financial loss

The purpose of an award for financial loss is to put Mr B back, as closely as possible, to the position he would have been in but for the delay by IM.

IM says it should calculate the loss as though Mr B transferred and then invested in the FTSE in July 2022. It estimated the loss to be around £1,800. It assumed the money would have been sent on 22 July 2022 to allow for around 2 weeks to do this from the date of the request at the start of July.

Mr B didn't agree. He gave an instruction to transfer in preparation for investment when the FTSE fell below 7,000. He would then have invested in September 2022 and his loss would have been around £8,400.

I can see he gave the instruction on 8 July 2022 to move money from a cash deposit to the platform from which he intended to invest. IM failed to do this. The funds became available to Mr B in early November 2022 by which time the FTSE had risen above 7000. Mr B has confirmed that he finally invested the money that was transferred in late September 2023. In the meantime it was held on his new pension platform but did not earn any interest while not invested.

I have considered the evidence to decide how to put Mr B as closely as possible back into the position he would have been in. I have also considered Mr B's duty to mitigate his loss.

I have seen evidence provided by Mr B of exchanges between him and his IFA in September 2022 and referring to an earlier investment in June 2022. It is clear that cash remained on his account until he decided to invest and that he was quite deliberate in timing when he invested. Cash remained there from April to June 2022 until he invested into the FTSE in June 2022. The emails reference good value starting to appear. I have also seen exchanges from June 2023 where Mr B reconfirms he wants cash funds to remain until he feels the market has dropped. Again I think this shows a deliberate pattern of decision making about the timing of his investments. I have also seen exchanges with his IFA confirming he intended to invest when the market fell below 7000.

It isn't possible to be completely certain of what would have happened. But based on the evidence presented on balance I think Mr B has shown that he was careful in the timing of his investments into the market, that no cash remained and he needed the money from IM to do so, that he was investing in FTSE tracker funds and intended to make further investments into them when the market fell below 7000.

So for those reasons on balance I think it is more likely that not, that had the money been transferred sooner he would have invested in the two FTSE tracker funds in autumn 2022 when the FTSE 100 fell below 7000.

But I note that he had still not invested the cash until September 2023. That further supports his deliberate decision making. But he also had a duty to mitigate his loss. So for that reason I don't think IM should be responsible for any losses (if any) incurred due to a failure to invest after the money was received from IM in November 2022. Further Mr B has confirmed that while this cash was held it was in a non-interest bearing account. So I have not made any award for lost interest after November 2022.

To compensate Mr B fairly IM should:

- Compare the notional value 1 with notional value 2. If the notional value 1 is greater than the notional value 2, there is a loss and compensation is payable. If the notional value 2 is greater than the notional value 1, no compensation is payable.

- If there is a loss, IM should pay into Mr B's pension plan, to increase its value by the amount of the compensation and any additional interest. The payment should allow for the effect of charges and any available tax relief. IM shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.

- If IM are unable to pay the compensation into Mr B's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore, the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr B won't be able to reclaim any of the reduction after compensation is paid.

- The notional allowance should be calculated using Mr B's actual or expected marginal rate of tax at his selected retirement age.

- It's reasonable to assume that Mr B is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr B would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%. I note Mr B has confirmed he is currently a basic rate taxpayer and expect that to continue in retirement.

- Provide the details of the calculation to Mr B in a clear, simple format.

Portfolio name	Status	Benchmark	From ('Start date')	To ('end date')	Additional interest
Current	Still exists	50% HSBC	27	Date of	8% simple

platform	and liquid	FTSE 100 Tracker 50% Vanguard FTSE 100 tracker These are the tracker funds Mr B invested into in June 2022 with the money held on his account at that time.	September 2022	settlement	per year on any loss from 20 September 2023 to the date of payment pursuant to this decision.

Notional value 1

This means the amount payable from the investment at the end date should the investment have been instructed on 27 September 2022. IM should account for the normal delay between instruction and investment if any applies.

Notional value 2

This is what the investment would have been worth at the end date had the investment been instructed on 7 November 2022. As above, this should account for the normal delay between instruction and investment.

Why is this remedy suitable?

I've chosen this method of compensation because:

- I accept Mr B's argument that he intended to invest once the FTSE 100 index fell below 7,000.

- The sum in question remained uninvested for a significant period of time until September 2023, and the calculation of current loss attributable to IM's errors must take account of that fact. However from September 2023 Mr B invested the money. Had the complaint been resolved and the amount of loss been paid to Mr C at that time, I think it's fair and reasonable to conclude that he would also have invested that amount at the same time. I have therefore directed additional interest on the loss from 20 September 2023 (the date of investment) to the to the date of payment pursuant to this decision. I notified both parties of my intention to make this addition and neither has objected.

There is guidance on how to carry out calculations available on our website.

So far as I am aware IM has not made any payment to Mr B in respect of his financial loss. If however it has made a payment for financial loss that amount can be deducted from the amount calculated as payable under this decision so that only the balance is payable.

Distress and inconvenience

I have considered an award for distress and inconvenience. The purpose of such an award is to reflect the impact of the delay on Mr B and not to punish IM. We all experience inconvenience in day-to-day life but I think this went further than that.

I can see that following the initial request made in early July 2022 Mr B had to chase several times in August and again in September 2022. Calls were not returned. He had to chase for confirmation of the amount finally transferred. I can see that this was frustrating and it took some time to resolve the delay.

On balance I think an award of £200 for the distress and inconvenience is fair and reasonable in the circumstances.

My final decision

I uphold this complaint.

I direct that Intelligent Money Ltd should within 30 days of this service confirming that Mr B has accepted this decision:-

1. Pay Mr B £200 for distress and inconvenience (to the extent that it has not already done so)

2. Calculate the amount of loss (if any) using the calculation of compensation set out in the financial loss section above and paying that amount into Mr B's pension or to him directly.

   For the avoidance of doubt the amount payable under 2 above can be reduced by such amount (if any) as Intelligent Money Ltd has paid to Mr B in respect of his financial loss.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 16 May 2024.

Colette Bewley
Ombudsman