

The complaint

Mr A complains that Curtis Banks Limited (CB) delayed the processing of his pension drawdown application which then resulted in him losing a significant sum of money as a result of market movements.

Mr A would now like CB to recompense him for the losses that he says are attributable to their delays.

What happened

In February 2023, Mr A contacted CB by phone and email, asking for a team member to get in touch with him about starting the process of taking money out of his pension. Several days later, CB responded to Mr A's email, asking for his telephone number.

As Mr A didn't believe that anyone from CB had attempted to get in contact with him, he complained to them. In summary, he said that he was unhappy with the service that he'd received from CB and felt that there had been a lack of customer service in response to his withdrawal request. Four days later, CB responded to Mr A, emailing him with a copy of the benefit request form that he'd need to complete to enable him to start taking monies from his pension.

On 8 March 2023, CB received the signed benefit form back from Mr A and over the following two days, CB raised a number of queries with him about his request. On 15 March 2023, a manager from CB then contacted Mr A to clarify a final point and on the same day, CB instructed a sale of his fund.

Mr A then contacted CB on 16 March 2023 to say that he didn't believe that his complaint had been resolved to his satisfaction. In summary, he said that as he had telephoned as early as 16 February 2023 and not had a response, CB hadn't acted upon his instructions in a timely manner and as such, given the unit price on his pension had fallen in between his request for a withdrawal and them actioning it, he felt that they should make good his losses.

After reviewing Mr A's complaint, CB said that they agreed there had been some failing on their part where Mr A hadn't been contacted by their Benefits Team in a timely manner. CB offered Mr A a hamper and £150 for the trouble that they had caused him. Also, in a call with Mr A, CB explained that they would not charge him their usual benefit crystallisation and income payment fees.

Mr A was unhappy with CB's response, but they later explained that they didn't accept their delays had resulted in him losing out financially because the fund that he was invested in only priced the units weekly. Unhappy, Mr A referred his complaint to this service. In summary, he said that he had lost out financially because of CB delaying the processing of his withdrawal. He went on to say that he wanted CB to compensate him for the losses that he'd incurred because of those delays.

The complaint was then considered by one of our Investigators. She concluded that CB's actions had resulted in Mr A losing out financially, so she felt that CB should recompense him for his losses. CB, however, disagreed with our Investigator's findings. In summary, they said that despite the delays, there wasn't any evidence to suggest that they could have processed Mr A's withdrawal request any quicker, particularly in light of the fact that the fund he was invested in was priced weekly. Based on the timing of when they received his paperwork, they say, meant that he hadn't lost out financially.

Our Investigator was not persuaded to change her view as she didn't believe CB had presented any new arguments she'd not already considered or responded to. Unhappy with the Investigator's view, CB then asked the Investigator to pass the case to an Ombudsman to review that outcome.

After carefully considering the complaint, I issued a provisional decision on this case as, whilst I explained that I had reached the same conclusion as the Investigator, I had done so for slightly different reasons and wanted to give both parties an opportunity to respond.

What I said in my provisional decision:

I have summarised this complaint in less detail than Mr A has done and I've done so using my own words. The purpose of my decision isn't to address every single point raised by all of the parties involved. If there's something I've not mentioned, it isn't because I've ignored it - I haven't. I'm satisfied that I don't need to comment on every individual argument to be able to reach what I think is the right outcome. No discourtesy is intended by this; our rules allow me to do this and it simply reflects the informal nature of our service as a free alternative to the courts. Instead, I will focus on what I find to be the key issue here, which is whether CB acted as promptly as they could have done when processing Mr A's withdrawal.

My role is to consider the evidence presented by Mr A and CB in order to reach what I think is an independent, fair and reasonable decision based on the facts of the case. In deciding what's fair and reasonable, I must consider the relevant law, regulation and best industry practice, but it is for me to decide, based on the available information that I've been given, what's more likely than not to have happened. Where there's conflicting information about what happened and gaps in what we know, my role is to weigh up the evidence we do have and to decide on the balance of probabilities, what's most likely to have happened.

And, having done so, I'm upholding Mr A's complaint - I'll explain why below.

From the point that Mr A initially contacted CB on 16 February 2023 to the point at which they completed the transaction request on 15 March 2023, was 28 days. Mr A says the withdrawal could have been completed by 8 March 2023 and most of the delays associated with the transaction were down to CB. Whilst CB has conceded that some of the delays are attributable to them, not all of them were. So, it seems the focus of my decision is determining what position Mr A would now be in were it not for the missteps along the way.

Mr A's pension was invested in a fund that is only traded on a weekly basis, and as is typical, instructions to deal in that fund have to be received before the valuation point. The fund, which is valued mid-week, priced the units on the following basis:

- *Wednesday 1 March 2023 – 304.59p*
- *Wednesday 8 March 2023 – 299.56p*
- *Wednesday 15 March 2023 – 281.89p*

CB have explained that because they received Mr A's completed benefit form back on 8 March 2023, he received the next available unit price which was 15 March 2023 and therefore, they say, he's not lost out financially. So, I've looked very closely at the chain of events in this case to understand what happened and when.

Mr A has provided screenshots of his phone bill, demonstrating that he contacted CB on both 16 and 17 February 2023. The call on 16 February 2023 lasted 54 seconds, the calls on 17 February 2023 lasted 30 seconds and the other lasted one minute 42 seconds. Mr A says that he left voice messages on each occasion, asking to be telephoned back but then never heard anything further. CB says that it records all of the telephone calls made to its service and despite the screenshots, they can find no evidence of the calls to them. Rather than telephoning CB's general helpline, Mr A's calls were to individuals that had helped him previously and I think that's problematic, primarily because Mr A wouldn't have known if those individuals were on holiday. So, whilst I'm not doubting that Mr A placed the calls to CB, I don't think CB could have done anything differently here because in not receiving a prompt response, Mr A could have telephoned their general helpline which is well publicised on their website.

After not receiving a call back, Mr A then emailed an individual that he had previously dealt with at CB on 20 February 2023, asking them to contact him. Despite that individual no longer working for CB, that message was picked up by another team member, who responded the following day, asking for a telephone number that they could reach him on. They also left him a voicemail with a telephone number to call. Mr A says that when he tried the telephone number that had been left on the voicemail, it was incorrect. Despite the number being incorrect, Mr A did at this point ring CB's general helpline and asked for the individual who called him to telephone him back. Despite that request, that individual failed to return his call.

As Mr A wasn't able to reach CB on the telephone number provided in their voicemail, he decided to formally complain on Thursday 23 February 2023. Given Mr A sent his email message at 5:43pm, CB wouldn't have seen his complaint until the following day. And, on Monday 27 February 2023, which was the next working day after having received his complaint, CB telephoned Mr A to discuss his concerns. During that discussion, Mr A explained that he wished to extract benefits from his plan so wanted to understand how much tax-free cash he could withdraw and also confirmed that he wished to take an income. During that conversation, CB explained to Mr A that he'd need to complete a form to take benefits from his plan and that they would arrange for one to be sent to him. Finally, they apologised for the inconvenience that they'd caused and offered Mr A a hamper. The same day, CB emailed Mr A back with confirmation that he would need to complete a form and return that to them. It appears, however, that CB failed to attach the form to the email which they sent to Mr A.

It wasn't until 6 March 2023 that Mr A alerted CB that the benefit form wasn't attached to their earlier email. CB responded the same day to Mr A, providing the necessary form for him to complete which they then received back from him on 8 March 2023. However, CB considered that Mr A's instructions were unclear because he had stated that he wished to crystallise £750,000 and take £125,000 as tax free cash, so CB emailed Mr A on 9 March 2023, asking for clarification on his instructions. When Mr A's response to CB's questions on 10 March 2023 failed to address their queries, CB's Benefits Team Manager telephoned Mr A on 15 March 2023 to clarify his instructions. The same day, CB instructed a sale of Mr A's fund and achieved 15 March 2023's unit price.

So, had CB provided Mr A with a correct telephone number on 21 February 2023, he could have raised the same set of questions with them that day, which formed part of his discussion on 27 February 2023, setting off the withdrawal process sooner. So, I've

concluded that 21 February 2023 is the date that CB would have emailed Mr A the benefit form, had it not been for their mistakes. However, when CB provided Mr A with an email that incorrectly stated the benefit form was enclosed, it took him a week to identify that the form wasn't attached. So, it seems the point at which Mr A went to complete the benefit form in anticipation of sending it back to CB was a week after receiving it. Therefore, I've also concluded that if CB had sent the form on 21 February 2023, Mr A would have taken a week to send it back to them, so on 28 February 2023; that works on the assumption that the form was included (as it should have been) in CB's notional email of 21 February 2023. So, 28 February 2023 is the point at which CB would have started processing the request.

Looking at the queries that CB raised with Mr A, I don't think they were being unreasonable in seeking clarification prior to undertaking the withdrawal. Whilst Mr A might believe they could have clarified things after the withdrawal, I don't agree and that's because there could have been unintended consequences of taking an incorrect course of action for which CB could have found themselves liable for.

As I've already explained, when Mr A originally submitted his form on 8 March 2023, it took CB a week to clarify his wishes. When CB didn't get the confirmation that they needed from Mr A on 10 March 2023, I think it's at this point that CB could have acted more efficiently by telephoning Mr A sooner than three working days later as it's clear they weren't reaching a point where they were satisfied that they had what they needed to finalise the transaction. In any event, CB have explained in their submissions to our Investigator that processing a drawdown application isn't an instantaneous process and can take up to five days because of the work involved. So, even allowing CB five days to complete their necessary processes would have taken them to 7 March 2023. I've therefore concluded that I don't believe CB could have completed the transaction in time for the 1 March 2023 unit price, but I am of the view that they could have completed the drawdown in time for the 8 March 2023 share price.

Whilst my approach is not an exact science, I have to work on the balance of probabilities – that's all about making calculated assumptions about what I think is most likely to have happened had it not been for the delays. CB have already conceded that they could have acted more promptly when undertaking the transaction, but I'm satisfied that my conclusion takes account of the actions of both parties at the different stages of the process. Mr A has pointed out that his withdrawal request in the previous tax year took CB 11 days to complete from the point he contacted them on 4 March 2022, to when they completed the sale on 15 March 2022. So, it seems to me that the approach I have applied above works to a similar timeframe and is a fair and reasonable outcome for both parties for the reasons I've explained above.

Responses to my provisional decision

After considering the provisional decision, Mr A explained that whilst he didn't disagree with the outcome, he highlighted that any redress should also take account of a dividend payment that was made in January 2024 that he would've had the benefit of were it not for CB's mistake. In addition, Mr A also explained that he was unhappy that if the redress wasn't paid into his pension, it was unfair to apply a notional tax adjustment to it because, he said, that would mean should he invest into an Enterprise Investment Scheme (EIS), he would be prevented from reclaiming that 'notional' tax. He said that if the redress was paid directly to him, CB should not deduct any tax.

After reviewing the provisional decision, CB didn't agree with the outcome. They said that they tried to obtain a telephone number to reach Mr A on Tuesday 21 February 2023, but he didn't respond until 17:09 that day, meaning that the first opportunity they had to speak to him wasn't until the following day, Wednesday 22 February 2023, which is the point at

which that they left him a voicemail (giving both an incorrect and a correct telephone number which they could be reached on). In any event, CB say that given their email to Mr A on 21 February 2023 contained the correct number upon which they could be reached, it was unfair to base the notional start date for the loss calculation on 21 February 2023. They also explained that having looked at their call logs, they were able to show that Mr A telephoned their main helpline on Thursday 23 February 2023 at 10:49 (rather than on 22 February 2023 as first thought), to return their missed call from the previous day.

CB went on to say that the date that they should have contacted Mr A was the following day, Friday 24 February 2023, and it's at this point that they should have sent him the benefits form. This meant they would have been in a position to sell Mr A's investments down on 10 March 2023, resulting in the 15 March 2023 unit price being achieved.

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.

As I've already explained in my provisional decision, I have to work on the balance of probabilities – that's all about making calculated assumptions about what I think is most likely to have happened, and when, had it not been for the delays. So to be clear, my approach is not an exact science, but my assumptions do take account of the actions of both parties. In reaching my final decision, I've looked very closely again at the full chain of events that took place and I've also listened to the new call that CB have provided, where Mr A telephoned them on 23 February 2023, as well as the existing calls that were already on the file. Following this feedback, I have made a small number of subtle changes to my assumptions, but my decision is broadly the same.

I think it's important to be very clear about what happened and when. Mr A emailed CB on Monday 20 February 2023 asking them to contact him. He then provided his telephone number to them on Tuesday 21 February 2023 (at 17:09) after being asked by CB for his number. CB contacted him on Wednesday 22 February 2023, leaving a voicemail with two numbers, one correct and one incorrect. Mr A then telephoned both numbers on 23 February 2023 and got through on the main switchboard number that CB had left, asking for the individual who telephoned him the day before to call him back.

CB knew that Mr A needed to speak to them as early as Monday 20 February 2023 and looking at the tone of his email from that day, it's clear to me that even at that point, he was frustrated at being unable to reach someone to talk to about his plan. Despite leaving a message for him (on 22 February 2023) and Mr A trying to contact them on Thursday 23 February 2023, CB didn't make contact again with him until Monday 27 February 2023 – and I suspect that call was only prompted by Mr A's email from 23 February 2023 at 17:43, raising a complaint. So, from the point Mr A asked to speak to someone, CB took seven days to establish how they could help him. I think that's problematic for a number of reasons, and I'll explain why.

When Mr A emailed CB on 20 February 2023 asking them to contact him, he included his CB plan number, his name and his email address, so I don't doubt that they would have been able to locate him on their system. And, from what I've seen from the file, it seems to me that Mr A has been a client at CB for some time, so I find it unusual that they needed to ask him for a telephone number which they could reach him on when he asked them to contact him. I say that because in the February 2023 email trail, it also included earlier correspondence from 4 March 2022, where it appears Mr A raised identical issues to the

most recent concern that he is now complaining about; an inability to speak to CB about extracting monies from his pension fund.

During that 2022 email exchange, a CB colleague stated that they would telephone him about his queries – so, it therefore follows that CB must already hold a telephone number for Mr A on their systems because in the March 2022 exchange, they didn't ask for one. Whilst the March 2022 email message doesn't state what telephone number CB that would use to call him on, Mr A has stated that he has had the same mobile phone number for at least 20 years. I'm therefore of the view that CB didn't need to email Mr A on 21 February 2023 asking for his telephone number because it was more likely than not already available to them on his record had they looked. This means that they could have telephoned him on 21 February 2023 rather than asking him for information that they likely already held.

I've listened again to CB's call to Mr A of 27 February 2023, where a manager contacted him to take details of his complaint. During that discussion, she explained the reason that they hadn't got back in touch with him until that point was *'because it had been a really difficult time for us with capacity'*, and she went on to say that *'we're trying to get back to as many people as we can'*. So, I well suspect that points towards why CB only attempted to telephone Mr A once after his initial contact. However, whilst CB may experience spikes in demand at certain times of the year, that's not Mr A's fault and he shouldn't be penalised as a consequence of that.

So, despite what CB has said about Mr A actually calling their switchboard on 23 February 2023 rather than an earlier date, I don't think that makes a difference to this element of my decision because had CB looked at their systems, they wouldn't have needed to email him as they likely already had his telephone number. As such, I'm still of the view that it's likely Mr A would have spoken to CB on 21 February 2023 had it not been for CB's later mistakes and then held the conversation that he later had with them on 27 February 2023, six days earlier. In any event, as I've already explained, I don't think it's reasonable for Mr A to have had to wait a week before being able to speak to CB (and if I took account of his attempts to speak to CB on 16 and 17 February 2023 – that would mean he had to wait 11 days before finally being able to speak to someone at CB).

When CB sent Mr A their email of 27 February 2023, it took Mr A a week to realise the benefit form wasn't enclosed. And, from the call I've listened to of 27 February 2023, I know Mr A knew a form was needed by CB because he reiterated that fact during their discussion, and that's because he'd already had to go through the same process a year earlier. When he prompted CB for the form on 6 March 2023, they provided a form to him the same day. CB say that as Mr A didn't send that form back to them until 8 March 2023, nine days should be added on to the notional start date of when Mr A should have received the form. However, given that Mr A returned the form to CB by Royal Mail Special Delivery, which he says they received at 8:16 on 8 March 2023, I'm not granting that ninth day because CB had the completed paperwork for the start of the business day on 8 March 2023. Whilst Mr A hasn't been able to provide evidence of the Royal Mail delivery on 8 March 2023, I've no reason to doubt him and in any event, it seems that CB haven't disputed this point anyway.

I've also looked again at all the various interactions that CB had with Mr A following receipt of his completed benefits request form. On 9 March 2023 at 16:42, CB emailed Mr A, asking him to confirm the amount of monies he wished to crystallise along with the amount of tax-free cash he wished to extract. Having looked at Mr A's completed form, it seems clear to me that he wanted to crystallise £750,000 and take £125,000 as tax-free cash. CB's email appears to question whether he wished to take the maximum tax-free cash from that amount (so, £187,500), but as Mr A has Fixed Protection 2012 (which is noted on the form) and he had already taken £325,000 in a previous year, he was limited to just £125,000.

However, given the nature of CB's question to Mr A, I well suspect that CB hadn't considered the earlier tax-free cash that Mr A had already taken or the fact that he had Fixed Protection. I say that because had they understood his circumstances in full, I think it would've been fairly evident what was driving the £125,000 tax-free cash amount.

Importantly, Mr A noted the amount of tax-free cash he wanted on the application form, he gave a specific amount and didn't tick the 'Max' box. So, it seems to me that his instruction was clear at the outset, but as I've already explained in my provisional decision, I don't think it's unreasonable for a business to confirm a consumer's instruction because typically, they're irrevocable once transacted. When asked, Mr A confirmed his wishes to CB the same day (9 March 2023 at 17:00), so it's reasonable to conclude that they would have received his response the next working day. I think it's at that point in which there was no ambiguity about what Mr A wanted but despite this, CB then replied on 10 March 2023, again asking Mr A to confirm his wishes but by that point I think what he wanted was already very clear. Mr A again confirmed the amount he wished to crystallise and the amounts which he understood would be taxable and non-taxable the same day (10 March 2023). Despite CB's email from 10 March 2023, I'm satisfied that CB already had everything that they needed to process the paperwork at the start of that business day. I've therefore concluded that having had Mr A's completed form for three full business days, this was a reasonable amount of time to process his request.

If I add on those additional days to the notional start date of 21 February 2023, the eight days leads to 1 March 2023 and the three days leads to 6 March 2023. So, having thought again about the various stages, I'm not minded to alter my original opinion and I've therefore concluded that I am of the view that CB could have completed the drawdown in time for the 8 March 2023 share price.

Mr A has raised concerns about the use of a notional tax deduction in the provisional decision. He says he'd like CB to pay any redress to him without the deduction of tax. However, I'm unable to alter how the redress should be paid in the decision and that's because if Mr A opts to take any redress as a payment directly to himself rather than as a credit to his pension scheme, that payment wouldn't be going into and then coming out of the pension, it would be going directly to Mr A and as such, CB wouldn't be able to apply a tax-code to the monies.

Therefore, in recognition of the fact that at the point when a pension is taken, it is received net of tax, CB have to make a notional adjustment to that payment so Mr A would receive what he would've typically done, had the payment come out of the pension. Whilst Mr A has said that he would use those monies from the pension to invest in to EISs, this service has to follow the guidance set out to it by HMRC, sometimes referred to as the 'Gourley Principle'. In any event, whilst I do appreciate Mr A's concern that by having any redress credited to his pension may impact his Fixed Protection, I would strongly recommend he consult a financial adviser before deciding which course of action to take and that's because this service is not able to provide personalised advice about which option would be the most suitable.

I do agree with Mr A's contention that he should benefit from the January 2024 dividend payment, that his monies would have benefited from had they been invested. I've updated the redress accordingly.

In upholding the complaint, I require CB to take the following actions to put things right for Mr A:

Putting things right

CB should determine how many units Mr A would have had to have sold to achieve his withdrawal request had they used the 8 March 2023 share price. They should compare that figure to what he actually sold and purchase additional units in the same fund to increase his pension by the lost amount.

- Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.
- If CB is unable to pay the compensation into Mr A's pension plan, it should pay that amount directly 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 that the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr A won't be able to reclaim any of the reduction after compensation is paid.
- The *notional* allowance should be calculated using Mr A's actual or expected marginal rate of tax at his selected retirement age. It's reasonable to assume that Mr A is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr A 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%.
- Income tax may be payable on any interest paid. If CB deducts income tax from the interest, it should tell Mr A how much has been taken off. CB should give Mr A a tax deduction certificate in respect of interest if he asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Within their calculations, Curtis Banks should also ensure that their redress calculations take account of the dividend payment that Mr A's funds would've been entitled to in January 2024.

As Mr A didn't receive his drawdown funds at the point he should have, CB should recompense him for not having access to this monies for a week, therefore they should pay him seven days interest at 8% simple on the total funds that he extracted.

In their telephone call to Mr A on 15 March 2023, CB explained that because of the delays that he'd experienced, they were willing to waive their benefit crystallisation and income payment fee of c£380. Whilst I'm of the view that CB are entitled to charge for the work that they have undertaken, they've already made that offer to Mr A both verbally and in writing (on 16 March 2023), so I see no need to alter that. Therefore, CB should refund that fee if it has already been charged.

Thinking about the trouble and upset that CB have caused to Mr A's retirement plans, I think their offer of a food hamper and £150 is fair and reasonable in the circumstances. The £150 is in line with what I would have instructed CB to pay Mr A had they not already offered to do so. Therefore, CB should pay Mr A the £150 if they have not already done so.

My final decision

I'm upholding Mr A's complaint and I require Curtis Banks Limited to put things right for him in the manner that I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 2 April 2024.

Simon Fox
Ombudsman