DRN-5041837

The complaint

In July 2023 Mr S instructed a change of management for his Curtis Banks Limited ('CBL') Self-Invested Personal Pension ('SIPP'). His instruction was to cancel the management service previously provided by Charles Stanley ('CS') and to appoint Close Brothers ('CB'). On 8 August 2023 CB conveyed to CBL Mr S' instruction and requested the transfer of management for the SIPP, and in September the instruction to transfer the SIPP's portfolio was sent to and received by CS. The transfer of management between CS and CB also involved transfer of custody of the SIPP's assets between both firms.

The transfer involved movement, to CB, of assets in specie and in liquidated cash. Transfer of the former was conducted between CS and CB, and transfer of the latter was conducted through CBL. CBL did not transfer the cash holding to CB until 23 November 2023.

Mr S has complaints against CBL and CS, which we have separated. The present complaint is only about CBL, and his claim that CBL delayed in the transfer of the cash holding, causing him trouble and inconvenience and leading to a financial loss in the investment/reinvestment planned for the cash holding.

What happened

One of our investigators looked into the matter and concluded that a settlement proposal made by CBL to Mr S is reasonable, and that it does not need to do any more.

Mr S said the part of the offer related to the calculation of compensation for financial loss should involve our service, and that the £50 value CBL has offered for the trouble and inconvenience he faced is significantly insufficient. He noted that CBL initially disputed the complaint, and he said he has spent around 10 hours in preparing and producing both complaints, which could have been avoided had CBL conceded the complaint. He suggested an award for trouble and inconvenience in line with the value of his time for the 10 hours.

The investigator explained to Mr S that we would not normally leave a case open whilst settlement is being calculated, that where we uphold a case responsibility to calculate redress is placed on the respondent firm, that what CBL has offered for financial loss in his case is in line with how we would approach redress in his case, so the offer is reasonable. With regards to compensation for trouble and inconvenience, she said it is not designed to be punitive in nature and it is not to be determined in the way he suggested. She referred to guidance on our website on how we approach such compensation.

Mr S forwarded us input from CB on the calculation of redress for financial loss based on how his intended investments would have performed but for the delay. The investigator acknowledged receipt of it, and noted that calculation of redress with the same type of approach is what CBL will be doing.

The input from CB, presented in Mr S' email to us, includes the following –

"*The logic to my maths is as follows: the assets that we received "in good time" (c£838k) is the proxy for how the delayed assets should have performed. This is a valid assertion, as we*

follow a certain investment approach …

Using the return earned by the invested assets during the delay period (+5.6%) and applying this to the sum which was delayed (primarily due to Curtis Banks in my opinion) we get to the sum of £16,490.73."

"*Evidently it is pretty unusual that a portfolio might deliver a return such as that in such a short period of time. However the period in question happened to coincide with the US Fed's 'pivot' on interest rates, which kicked off a bull market. So that explains the number being argued by us on the face of it being quite high*."

With regards to the facts of the complaint, the investigator mainly found as follows:

- After receipt of the 8 August instruction, CBL asked CB (on the same day) for an original copy of the instruction, and on 15 August it asked CB to address additional requirements (arising from its compliance with regulatory guidance). CB responded the following day.

- The transfer instruction to CS was sent on 5 September.

[The same investigator appears to have dealt with the complaint against CS and in that complaint she noted that later in September CS executed instructions to liquidate some of the SIPP portfolio's assets, by early October the liquidations had concluded/been settled (creating the cash holding), and that by late October the cash holding had been sent by CS to CBL (to be transferred on to CB).]

- CBL received the cash holding from CS on 2 November, but it did not forward it to CB until 23 November.

- As part of CBL's settlement offer, it concedes that it caused a delay at the outset between when it received CB's response to the additional requirements and when it instructed CS to begin the transfer; and that it then caused a delay at the other end of the process between when it received the cash holding and when it remitted the cash to CB. It should have taken each action within five working days, but instead it did so in 13 working days for the first and in 15 working days for the second, so it caused delays of eight working days in the first and 10 working days in the second (a total of 18 working days).

- CBL has offered to calculate any investment loss incurred by Mr S due to the delay. This is consistent with what we would expect. It has also offered Mr S a £50 credit with regards to the fees for his SIPP, due to the level of service he received in the matter.

The complaint was referred to an Ombudsman.

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.

CBL initially disputed Mr S' complaint, but the reality is that it has since changed its position. Its settlement proposal, as conveyed to us, is essentially confirmation that it now concedes his complaint and recognises that redress must be looked into, and that the trouble caused to him must be compensated for. Its offer was made in open correspondence to us and

without conditions. It states as follows –

"*To conclude, the clients frustration regarding the length of time taken to transfer funds from Charles Stanley to Close Brothers is understandable. Due to the fall down in service, I would like to offer* [Mr S] *a £50 fee credit from our Annual Administration Fee. Further to this, I would like the opportunity to look into any potential investment loss that may occurred, due to the 18 working day delay to ensure the client is put back into the position he would have been in, had the delays not occurred*."

On the above basis, I consider that CBL has essentially upheld Mr S' complaint and offered the resolution quoted above. For the reasons I address next, I endorse its position in this respect.

In terms of merits, the complaint is upheld. The total delay of 18 working days that CBL caused is quite apparent in the chronology of events, it is supported by available evidence for those events and it is without justification or a reasonable explanation. I acknowledge that this total has been calculated net of the five working days allowance applied to each of the two delay events (that is, as explained above, the delay events at the beginning and towards the end of the process). This has been applied to allow for reasonable time in which CBL should have taken each relevant step.

On balance and in the circumstances of this case, I do not consider it unreasonable to allow five working days for CBL's processing and execution of the relevant steps in the transfer of management process. This would have allowed for the internal administration/due process and any decision making/approval associated with or required for each step.

It acted on the 8 August instruction in a timely fashion (on the same day of receipt), and five working days later (on 15 August) it followed up with the additional requirements it put to CB. CB responded the following day, on 16 August, so CBL should have taken the next step in the process (sending the transfer instruction to CS) within five working days thereafter. That was not done until 5 September, 13 working days later (discounting the late August bank holiday), so it took eight working days longer than it should have. A similar analysis applies to the fact that CBL received the cash holding on 2 November but did not forward it to CB until 23 November. It should have done that within five working days. Instead, it was done on the 15th working day after receiving the holding, hence the 10 working days delay at this end of the process. The total, like CBL has stated and has accepted responsibility for, is an 18 working days delay.

Overall, Mr S seeks more than the total resolution offered by CBL but, on balance and for the reasons given below, I am not persuaded to award more than what he has been offered.

He does not appear to seek more – that is, compensation for more than an 18 working days delay – in terms of redress for financial loss. As far as I can see, his concerns in this respect are that the settlement proposed by CBL has yet to be calculated, such calculation has yet to be shared with him, such calculation should perhaps be led by CB (given that CB's reinvestment of the cash holding is relevant to the calculation) not CBL and he considers our service should be involved in calculating, verifying and/or concluding the settlement. In this respect, I acknowledge the input from CB that he has shared with us.

In the next section, below, I will set out orders on how CBL's settlement proposal should be calculated and carried out. This results from the fact that I have upheld Mr S' complaint, so consideration of and, where necessary, provisions for redress follow. I will be endorsing the proposal made by CBL, but because that proposal has not been accepted by Mr S and has not been settled between the parties, the task remains for me to deal with it in this decision.

Mr S' complaint is against CBL, and it is CBL's responsibility to redress any financial loss resulting from the 18 working days delays it caused to the change of management for the SIPP, and to the associated reinvestment/investment that was planned to follow the change of management.

The aim is to ensure the calculation is fair, reasonable and, in broad terms, based on a comparison between what would probably have happened to the cash that was reinvested but for the 18 working days delay (the *fair value/*performance) and what actually happened to the cash that was reinvested (the *actual value/performance*).

This inevitably requires a benchmark, on which the fair value/performance can be determined. In this respect, I have seen Mr S' evidence, across both of his complaints, about how CB had standing orders to invest the SIPP immediately upon completion of the management change. It follows from this that the performance of CB's planned portfolio for the SIPP would be the natural benchmark for the calculation – that is, for the calculation of how the cash that was reinvested would probably have performed but for the delay. My provisions below will address how this must be approached. However, for the reason I mentioned above, the obligation to calculate and pay redress will be CBL's to discharge, so I do not consider that another party should conduct the calculation. As the investigator explained to Mr S, it is beyond our role to conduct a redress calculation.

Mr S seeks more compensation for the trouble and inconvenience he has been caused in the matter. I do not need to give a full explanation of why our awards for trouble and inconvenience are not punitive (towards the respondent firm) because I note that the investigator already explained this to him. However, it remains a relevant point to note because it is evident from his initial submissions on the matter that the idea of punishing CBL and holding it to account for its wrongdoing in his case was, at least at the time, a driver in his claim for additional trouble and inconvenience compensation.

The purpose of our awards for trouble, distress and/or inconvenience is to assess and provide a financial form of compensation that recognises such impacts upon a complainant – impact usually arising from the complaint's subject. Like the investigator, I too refer to the part of our website with further information and guidance on this, at the following link – https://www.financial-ombudsman.org.uk/businesses/resolving-complaint/understanding-compensation/compensation-for-distress-or-inconvenience.

The award is not usually for claims based on the value of time a complainant has invested in a complaint. I understand the point Mr S makes in this respect, but I am not persuaded by it. All complainants inevitably invest their time in pursuing their complaints. It is in their interest to do so. I can see the argument he has made that most, if not all, of the time he has spent could have been avoided had CBL upheld the complaint and offered redress at the outset, or earlier than it did. At first sight, that is not an unreasonable argument. However, one effect of making an award to recognise this would be akin to punishing CBL for not reaching a particular outcome at a particular time and, I repeat, we do not make punitive awards.

The other would be to try to address, in isolation, the impact upon him caused by his continuing pursuit of a complaint that could have been resolved earlier. I consider this impact to be relatively minimal. CBL disputed the complaint in mid-January this year, Mr S referred it to us in mid-March and by around the middle of April it conceded the complaint and made its settlement proposal. Overall, I am not persuaded that there was a major impact, in terms of trouble and inconvenience, on Mr S caused by CBL taking around three months to decide to change its position and concede the complaint. What is worthy of note is that it is has corrected its earlier stance and done the right thing by changing its position, thereby seeking to avoid further dispute over merits.

Redress for any financial loss incurred will be the main compensation for Mr S in this case. CBL has undertaken to address that in its settlement proposal and I will be giving orders on how it must do so. The delays should not have happened and they undoubtedly would have caused him some trouble and/or inconvenience, but based on the circumstances of his case (including the total length of the delays) I consider that the £50 value compensation (to be applied as a credit to his SIPP's administration fees) offered by CBL is fair and reasonable. Our guidance, as explained in the link above, provides for awards ranging between an apology and an amount below £100 for mistakes by firms that cause a minimal impact. Discounting the financial impact, which is separate, I take the view that the non-financial impact resulting from the delays in Mr S' case was broadly minimal.

For the above reasons, I am not persuaded that CBL should have to pay more than it has offered for the trouble and inconvenience caused to Mr S.

Putting things right

My aim is to put Mr S as close as possible into the position he would be in had CBL not caused the 18 working days delay to the change of management for his SIPP, and to investment of the cash transferred to CB on 23 November 2023.

With regards to the trouble and inconvenience caused to him in the matter, and for the reasons given above, I endorse CBL's offer of compensation to him in the form of a £50 credit to his SIPP's administration fee. If CBL has not already executed this compensation, I order it to do so.

The remaining matter to deal with is redress for any financial loss caused in the delayed reinvestment of the cash transferred to CB on 23 November 2023. But for CBL's 18 working days delay, CB would probably have received the transferred cash 18 working days earlier, on 30 October 2023. Available evidence from CBL is that the net cash transfer to, and received by, CB on 23 November 2023 was £292,754.36, so this is the amount I refer to when I mention the 'net cash' in the orders below.

Before I proceed, I should note that sometimes, depending on the facts, redress for financial loss in a case like Mr S' could consider, firstly, whether (or not) the delay caused a loss in the liquidation value (with regards to prices when previous assets were liquidated) and then, secondly, whether (or not) the delay caused a loss in the reinvestment of the liquidated cash.

However, on balance and in the circumstances of his case, I do not consider this approach should apply. Available evidence shows that the initial plan was for an in-specie transfer of the SIPP's assets from CS to CB, but considerations between these two firms changed afterwards, during the process. That led to CS being instructed to liquidate some of the assets and to transfer the proceeds to CB, through CBL. Therefore, liquidation does not appear to have been a foreseeable matter at the outset. With regards the probability of timely reinvestment of the cash after the transfer, that ought reasonably to have been foreseeable to CBL because there was a change of investment management for the SIPP, so the probability of that being immediately or closely followed by some investment changes within the SIPP's portfolio was somewhat implicit.

Returning to redress for financial loss, CBL must do as follows –

- Apply the *start date* of 30 October 2023 and the *end date* of 23 November 2023 to the calculation of the actual and fair values mentioned below. The period covered by these dates is 'the redress period'. Redress is limited to this period because it is when the net cash was in CBL's custody, outside the market and uninvested, whereas it would otherwise have been in CB's custody and invested, but for CBL's

delay. CB's responsibility for the net cash began from the end date onwards, so I do not consider that the calculation of CBL's responsibility for it should go beyond the end date.

- Use the SIPP's portfolio, as initially invested by CB, as the benchmark for calculating fair value performance in the redress period – I gave reasons for this natural benchmark above. Calculate the performance rate for the SIPP portfolio (as initially invested by CB) in the redress period. This will be the benchmark rate. Mr S is ordered to assist CBL to obtain all information from CB that CBL reasonably requires in order to determine this.

- Calculate how the net cash actually performed in the redress period and apply that to its value. The result is the *actual value*.

- Calculate how the net cash would have performed, and its resulting value, in the redress period if it had performed in line with the benchmark rate. The result is the *fair value*.

- If the fair value is greater than the actual value, the difference is the 'redress amount' that must be paid to Mr S. If the fair value is not greater than the actual value, no redress is payable.

- Pay the redress amount into Mr S' pension plan. The payment should allow for the effect of charges and any available tax relief. The redress amount should not be paid into the pension plan if it would conflict with any existing protection or allowance.

- If CBL is unable to pay the redress amount into Mr S' pension plan, it should pay that amount directly to him. Had it been possible to pay it into the plan, it would have provided a taxable income. Therefore, the payment 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 is not a payment of tax to HMRC, so Mr S would not be able to reclaim any of the reduction after the payment is made.

- The *notional* allowance should be calculated using Mr S' actual or expected marginal rate of tax at his selected retirement age. If he is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal 20%. However, if he 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%.

- Pay Mr S interest on the redress amount at the rate of 8% simple per year from the date of this decision to the date of settlement if redress is not settled within 28 days of CBL being informed of Mr S' acceptance of this decision. This is to compensate him only if CBL delays in settling redress. If there is no such delay, this provision does not apply.

- Provide a full calculation of redress to Mr S in a clear and simple format.

Overall, I find that the above approach is what CBL would be expected to follow in its settlement proposal (as quoted earlier), based on the 18 working days delay it holds (and accepts) responsibility for. Given that the proposal has not been settled and the matter has reached this decision stage of our process, my decision is required and what I have set out above apply as my redress orders in the decision.

My final decision

For the reasons given above, I uphold Mr S' complaint and I order Curtis Banks Limited to calculate and pay him redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 24 October 2024.

Roy Kuku
Ombudsman