

The complaint

Mrs B is the beneficiary of a Self-Invested Personal Pension (“SIPP”) of her late husband Mr B. She is also the executor of his estate.

Mrs B complains that certain payments made out of the SIPP were due to a scam, and the loss caused as a result could have been avoided if Carter Allen Limited had done more to protect Mr B when the payments were made.

What happened

The background to the complaint is known to both parties and so I won't repeat it at length here.

Briefly, in 2014 in discussion with a firm which I will refer to as W, Mr B transferred his existing pension plans into a SIPP, administered by a company which I will refer to as 'G'. A bank account was set up with Carter Allen for the SIPP.

A report produced by W at the time recommended that Mr B use the funds received into the SIPP to invest in the shares of certain companies. Mr B accepted the advice. He opened the SIPP and invested in those shares through a company based abroad, which I'll call D.

In total three payments were made to D from the account with Carter Allen: £200,000 in December 2014, £200,000 in April 2015 and £120,000 in May 2015. Subsequently, Mr B received payments from D totalling about £406,000. These were used by Mr B to purchase buy-to-let flats outside of SIPP.

Mr B sadly passed away in 2018. Following this G wrote to Mrs B the options available to her in relation to Mr B's SIPP as the beneficiary. Whilst discussions were ongoing about this, Mr B's estate received a tax charge from HMRC for £286,000 to be paid in connection with the £406,000 Mr B had received. This was ultimately settled for about £178,000.

Mrs B complained to W (and then to us) about the suitability of the advice it gave to Mr B. That complaint wasn't successful. Briefly, the Ombudsman said that W ought to have done more to warn Mr B about the risks on investing in the shares. However, he considered it likely that Mr B was aware of the risks involved and he went ahead in any event. So, even if he had been given better advice, he would have likely acted in the same way.

Mrs B also raised a complaint against G. As it was no longer trading, this was considered by the Financial Services Compensation Scheme ('FSCS') and an initial compensation payment of about £29,000 was paid to Mrs B in January 2023. It is not clear whether any subsequent payments were received.

Mrs B then raised this complaint against Carter Allen along the lines I have mentioned earlier. The bank rejected her complaint. It said it hadn't done anything wrong.

One of our investigators considered the complaint and was of the view that it couldn't be upheld. He said, in summary:

- Given the passage of time, it is not entirely clear who made the payment instructions to the bank (Mr B or G), how the payments were requested and whether there was any intervention from the bank at the time or any warning given. However, there is no evidence to suggest that Mr B wasn't aware of the payments or that they were made without his consent. As a result, the payments were most likely authorised by Mr B.
- The payments were of high value, going abroad. In the circumstances, it would have been appropriate for the bank not to have simply relied on Mr B's authorisation before processing the payments as requested. It's possible that the bank did ask relevant questions at the time of the payments. However, there's no record to suggest this happened. So, it is assumed that no intervention took place.
- That said, had the bank intervened and asked Mr B / G questions about the payments, it would have been told that Mr B received financial advice from W about legitimately accessing his pension funds early. That he wasn't cold called by W but was referred to it by his neighbour. The bank would also have been advised that Mr B met W in person on several occasions, to discuss the SIPP and the investments.

In addition, there was nothing to suggest that W, G or D were not legitimate businesses. The bank would also have noted that Mr B had been authorised and regulated by the FCA as an investment adviser through his profession. As such he had knowledge and experience of high-risk investments and would've been familiar with the need to carry out suitable due diligence before going ahead with an investment.

Given all this information, the bank couldn't have refused to send the payments contrary to Mr B's instructions.

- Further, in relation to Mrs B's complaint against W, an Ombudsman concluded that even if Mr B had been advised of the risks, it's likely he would've gone ahead with the investments anyway. A similar view could be taken on this complaint about the bank. It can't be seen how Carter Allen expressing any concerns (about where he was sending the funds and for what purpose) would have likely resulted in Mr B acting differently. On balance, the payments would've been made regardless.

Mrs B did not agree. She was of the view that the bank hadn't explained what its procedures were at the relevant time and that it followed them. There is nothing to suggest that the bank carried out due diligence about the investments Mr B made. Mr B was entitled to expect this, and it is incorrect to conclude that Mr B would have gone ahead with the investments in any case.

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.

Having done so, I agree with the conclusions reached by the investigator essentially for the same reasons.

I am sorry to note the difficulties Mrs B has had over the last few years in relation to this matter. I can see that she had to deal with multiple parties over a prolonged period of time,

to even understand what was going on. I am also sorry for the time it has taken for this complaint to reach the final stage of our process.

In relation to this complaint, the account with Carter Allen is in effect a current account for the SIPP to receive and make payments. As such the bank's role in relation to the investments was restricted compared to some other parties. In broad terms, the starting position in law is that a bank is expected to process payments and withdrawals that a customer authorises it to make. So, it would be difficult to say that the bank was at fault in carrying out the instructions given by the trustees (be it by the member trustee or the professional trustee on behalf of the member trustee), in making the payments they authorised.

However, the bank should fairly and reasonably have had systems in place to look out for out of character or unusual transactions, or other signs that might indicate that its customer was at risk of fraud.

In this instance, I don't think it is unusual that payments were made out of a SIPP bank account soon after funds were received into it. Generally speaking, funds into a SIPP account would tend to be invested as soon as possible.

The three payments were made to the same payee and were spread out in the sense that they were not made in very quick succession which might be an indication to the bank that its customer may be at risk of fraud. So here again, I can't see a cause for concern to the bank.

That said I accept the investigator's view that the payments were large and were foreign payments, ought to have prompted the bank to check what was going on.

There is no evidence of any interaction between the bank and the payer at the time the payments were made. So, on balance, I consider that no such interaction took place. Therefore, the next question for me to consider is what likely would have happened had the bank intervened and asked Mr B / G questions about the payments.

Mrs B has pointed out that it isn't clear what the bank's procedure was at the time in such circumstances. She has contended that if there was one, and the bank followed it that might have prevented the loss.

Ultimately it is a matter for the bank as to how it chooses to configure its fraud detection systems and strike a balance between allowing its customers to transact business and questioning transactions to confirm they are legitimate. But where it is alleged that it didn't do enough to prevent a loss, I will look into the circumstances of the case and based on what I have seen, decide whether in that case the bank could have fairly and reasonably done more.

I am not persuaded that a bank ought to carry out due diligence for all the investments its customers make. However, if there was any publicly available information about the investments that ought to have raised concern, that is something I would expect a bank to take into account. I have not been presented with evidence of any such concerns about the investments at the relevant time. Indeed, had there been such publicly available concerns, I consider it more likely that Mr B would not have proceeded with the investments.

So, in the circumstances, I would have expected the bank – had it intervened – to contact the payer to ensure that it was they who were making the payments, enquire about how the payments came about and provide general warning about investment scams.

Had the bank intervened to check what was going on, as noted by the investigator, it would have been told that the payments were being made by Mr B following his discussions with W, a firm authorised by the FCA to provide investment advice. The bank would also have noted that Mr B himself was authorised by the FCA as an investment adviser and as such had investment knowledge and experience. In addition, there was nothing to suggest that W, G or D were not legitimate businesses. In the circumstances, I can't see that the bank would have had concerns about executing the payment instructions that were duly authorised by Mr B.

I have also thought about what would likely have happened had the bank provided warning to Mr B about investment scams and warned Mr B about falling to victim to such scams. I don't think that would have changed the outcome here. I say this because I am satisfied that Mr B had taken a considered decision to open a SIPP and make the relevant investments. Unfortunately, the investments might not have turned out the way he expected but he wasn't to know that at that time.

Mrs B says it cannot be said that Mr B would have gone ahead with the investments anyway had the bank warned him. It is difficult to know with certainty what would have happened. Where the evidence is incomplete or inconclusive, I reach my decision on the balance of probabilities – that is, what I consider is most likely to have happened, given the evidence that is available and the wider surrounding circumstances. For the reasons I have explained, I consider it more likely that whilst Mr B would have taken into account any warning provided by the bank, he would have asked the bank to proceed with the payments.

As I said, I am sorry for the loss and inconvenience suffered by Mrs B in relation to the SIPP. But what I am considering here is whether there was any error or omission on part of Carter Allen that led to the loss. I acknowledge what Mrs B has said in relation to this. However, I'm not persuaded that there was enough here for me to find the bank was at fault in carrying out the payment instructions in line with its primary obligation to do so.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 24 April 2024.

Raj Varadarajan
Ombudsman