Banking Ombudsman Scheme

Quick Guide

KiwiSaver

7 August 2017

KiwiSaver is a retirement savings scheme. Everyone over 18 is automatically enrolled in the scheme when starting a new job. Anyone not wanting to be a member must opt out between the second and eighth week of being enrolled in the scheme. Full information is available on the KiwiSaver website.

This guide covers:

- where to direct a KiwiSaver complaint
- the main types of KiwiSaver complaints we receive
- compensation we can recommend for KiwiSaver complaints

Where to take complaints

You should start with your provider. It is responsible for managing your KiwiSaver account. (When enrolling, you either select your provider, or if you don't, one is allocated to you.) Your provider's investment statement has details about its formal complaint process.

If you are not satisfied with the response through this process, and your provider is a member of our scheme, we may be able to investigate.

If your complaint relates to a decision by trustees of your scheme, you should take it to the dispute resolution scheme to which the trustees belong. Your provider's investment statement will have contact details. Or call your provider to find out who the trustees are. (A list of all providers is available on www.kiwisaver.govt.nz.) We can help refer you to the trustees' dispute resolution scheme.

Main source of complaints

Membership

Sometimes people want us to cancel their KiwiSaver membership. We do not have the power to do this. But we can consider compensation for inconvenience as a result of being locked into KiwiSaver if a bank has not made accurate disclosure about KiwiSaver to an individual who subsequently enrols in the scheme on the basis of that information.

Inability to withdraw funds
Generally speaking, you can access your KiwiSaver funds only when you become eligible for superannuation (NZ Super) at 65 (provided you've been a member for five years). The circumstances in which you can withdraw part or all of your savings before then include: buying your first home, financial hardship, moving overseas and serious illness.

Buying a first home
KiwiSaver lets people withdraw some of their savings to buy their first home (provided they've been a member for three years). However, it is vital you contact your provider *before* buying to confirm you are eligible and to ensure you follow the correct application process. Failure to do so may prevent you from accessing your savings.

Financial hardship
KiwiSaver allows you to withdraw savings if you are suffering significant financial hardship. However, you have to:

- show you have explored reasonable alternative sources of funding
- complete a statutory declaration about your assets and liabilities
- supply other documents or information to support your application.

Moving overseas permanently
You can withdraw all of your savings (except the tax credits) if you have lived overseas for at least a year and intend to remain overseas permanently. (The exception is if you've moved to Australia.) You must make a statutory declaration that you have left New Zealand permanently. You must also supply evidence of departure and sufficient proof of your residential address overseas.

If you have moved to Australia permanently, you can choose to keep your KiwiSaver account open or transfer the savings to an Australian superannuation scheme.

Serious illness
KiwiSaver allows you to withdraw all of your savings in the event of a serious or terminal illness or a permanent disability that affects your ability to work. Medical evidence must accompany such applications.

Compensation

If we uphold a KiwiSaver complaint, we may award compensation for inconvenience. However, we are unlikely to make the bank pay you compensation for the money in your KiwiSaver fund. This is because you have not "lost" the money. You are just unable to access it immediately. If you are an employee you may also take a contributions holiday after 12 months of membership to stop money being tied up in your KiwiSaver account. Contributions holidays last for five years but can be renewed at any time. You can apply for an early contributions holiday within the first 12 months of membership if you are in financial hardship.

We are unable to compensate a KiwiSaver member for direct loss for what is called lost opportunity. For example, we cannot recommend compensation if a member considers he or she may have earned higher returns by having invested money elsewhere. However, we may award compensation for inconvenience if a bank has made a mistake with the investment or given incorrect or misleading information.

Case 1: No opt-out option, but reasonable compensation

When Mr T visited his bank to open an account, the staff member suggested he join its KiwiSaver scheme. He completed and signed an enrolment form before he left, but subsequently complained that he had been given inadequate information and was pressured into joining.

According to Mr T, the staff member told him only about the benefits of the scheme. Mr T said he had agreed to sign the enrolment form simply so he could end the meeting. He wanted his KiwiSaver membership cancelled.

The bank informed Mr T it could not do this, but offered to pay him the equivalent of the first year of his contributions to KiwiSaver and $250 for inconvenience. Mr T declined the offer and asked us to investigate.

We have no power to cancel KiwiSaver membership. Mr T, once a member, could not opt out. But we considered his enrolment could cause significant disruption to his financial plans, even though he would ultimately benefit from any contributions. However, the fact the KiwiSaver Act 2006 allows members to apply for contributions holidays for up to five years at a time led us to conclude that the bank's offer was reasonable. On that basis, Mr T accepted the offer.

Case 2: Trustees' decision theirs alone – and outside our scope

Ms B owed money to a finance company that threatened to pursue bankruptcy proceedings if she did not settle her debt immediately. As a result, Ms B submitted a hardship application to her scheme's trustees to withdraw all of her savings.

The trustees approved withdrawals of $150 a week for six months to cover basic expenses. Ms B complained to us that this was insufficient to settle her debt with the finance company. She wanted all of her savings.

We explained that we could not look at the trustees' decision because they were not in our scheme.

Case 3: Court order necessary to effect agreement

After separating, Mrs J and her husband agreed to split their property. Under the agreement, Mrs J agreed to transfer savings from her KiwiSaver account to her former husband's account.

Mrs J's KiwiSaver provider was a bank. It told her it needed a certified copy of a court order and a copy of the settlement agreement before it could transfer her savings. Mrs J considered the agreement was as legally binding as a court order, and that the requirement to obtain a court order was thus unnecessary. She complained to us.

Contracts between former spouses or partners are legally binding, but they are not equivalent to court orders. A contract is a voluntary agreement between parties, whereas a court order is a ruling by a judge.

Section 21 of the Property (Relationships) Act 1976 says that agreements between spouses or partners over the division of property become legally binding once signed. The agreement complied with section 21. However, section 31 says such agreements, if they include the division of superannuation scheme entitlements, require a court order to give them full effect.

We told Mrs J the agreement alone was insufficient to enable the transfer of her KiwiSaver savings. Mrs J accepted this and sought a court order.

Case 4: Nothing to back wrong fund claim

Mr D complained that the bank had allocated his KiwiSaver contributions to the wrong fund. Contributors to his scheme could invest their money in “cash”, “conservative”, “balanced” or “growth” funds. Mr D said the bank officer had completed his application form for him when he set up his KiwiSaver four years earlier. He recalled asking for his money to be invested in the balanced fund. Instead, his contributions went into the cash fund. The balanced fund had performed better than the cash fund.

We reviewed the application form and noted that Mr D had signed and dated it. The form stated that all of his contributions would go into the cash fund. Shortly afterwards, the bank sent a letter confirming the investment in KiwiSaver, including that his funds were allocated to the cash fund. In addition, Mr D had received annual statements confirming that all of his contributions were going into the cash fund.

We could not establish whether an error had been made on the application form, but we considered Mr D had had numerous opportunities to review his investment selection and bring any errors to the bank’s attention. We found, therefore, that the bank was not responsible for any lost opportunity Mr D had suffered as a result of his money going into the cash fund instead of the balanced fund.

Mr D did not respond to our preliminary finding and we closed our file.