

Ombudsman's Determination

Applicant	Ms N
Scheme	Andor Retirement Fund (the SIPP)
Respondent	Hornbuckle Mitchell (Hornbuckle)

Outcome

1. I do not uphold Ms N's complaint and no further action is required by Hornbuckle.

Complaint summary

2. In summary, Ms N's complaint against Hornbuckle is that:-
 - There was delay, incompetence and maladministration by Hornbuckle following her request to transfer the SIPP.
 - Hornbuckle failed to issue invoices and alert her about missed rental payments, for the property held within the SIPP (**the SIPP property**), or the potential consequences.
 - Hornbuckle failed to notify her that Stamp Duty Land Tax (**SDLT**) was payable on the lease for the SIPP property, or that the lease needed to be registered.
 - The receiving pension provider, Mattioli Woods, told Ms N there was no reason for the transfer delay, as it was willing to accept the SIPP, despite the outstanding issues.

Background information, including submissions from the parties

3. Ms N and her business partner, Mr S, each held individual SIPPs with Hornbuckle. In addition, they jointly held the SIPP, which was a group SIPP through which they purchased the SIPP property.
4. The purchase of the SIPP property was completed in May 2012. Ms N, along with Mr S, was a director of the limited company (**the Company**) which leased the SIPP property. So, Ms N was a connected, part tenant of the SIPP property.
5. Ms N's solicitors, Chubb Law, prepared the lease contract, in which it was stated that the tenant was responsible for paying the SDLT due on the lease.

6. On 31 October 2012, Chubb Law emailed Ms N. This email said:

“Please also note that there are certain things [the Company] need to do following the completion of the lease including the payment of [SDLT] on the rent of £2,333.00 and the registration of the lease at the Land Registry for which a fee of £190.00 will be payable. If you would like my assistance in connection with these matters, please let me know.”

7. On 29 November 2012, Chubb Law wrote to Ms N and Mr S. This letter said:

“Whilst I am not currently acting for [the Company], I know that you are both officers of that Company, so I need to remind you of the email that I sent to you on the 31st October 2012, a copy of which I enclose for your reference. The Company will need to register the Lease (as it has a term of over 7 years) at the Land Registry within two months of its creation and, more urgently, there will be Stamp Duty Land Tax to pay on the Lease, which I calculated at £2,333.00. As I informed you at our recent meeting, this SDLT must be paid to HMRC within 30 days of the start of the Lease so it is now getting very close to being overdue. It is a criminal offence not to pay this tax and there are financial penalties for late payment.”

8. On 5 December 2012, Chubb Law emailed Ms N again regarding the SDLT, saying “May I receive your further instructions if you wish me to attend to [the SDLT] and land registration issues on behalf of [the Company].”

9. Around the same time, the SIPP secured a loan from Lloyds Bank (**Lloyds**) in order to carry out refurbishments on the SIPP property (**the Loan**). The refurbishment works were carried out and the Company began to make repayments to Lloyds towards the Loan. However, it did not keep up with the Loan repayments and ultimately fell into arrears with Lloyds. In addition, the Company did not pay rent to the SIPP in accordance with the lease.

10. On 11 March 2013, Chubb Law wrote to Ms N and Mr S. This letter said:

“I would refer you to my letter dated 29th November 2012, a copy of which I enclose for your reference. I have not received instructions to act for [the Company]. I now enclose the original Lease dated 1st November 2012 and would remind you that there will still need to be a declaration and payment made for [SDLT] purposes. The registration of the Leasehold interest in favour of [the Company] will need to be done as well. It is a criminal offence not to pay [SDLT] so the officers of [the Company] need to address this matter urgently.”

11. In July 2014, Mr S signed forms to initiate a transfer of the SIPP to Mattioli Woods. As Ms N also needed to sign the forms, these were returned by Hornbuckle in August 2014.

12. In December 2014, Hornbuckle forwarded the transfer forms to Mattioli Woods and requested further information from it. Ms N says that Hornbuckle also informed her it was in the process of valuing the SIPP.
13. From December 2014 to September 2015, there was a series of correspondence between various third parties. In particular, Mattioli Woods' solicitors were in communications with Lloyds concerning issues around the Company's lease being unregistered, and unpaid SDLT.
14. In September 2015, Ms N says Hornbuckle requested, via her financial advisor, that Property sale/Transfer out forms needed to be completed.
15. On 29 December 2015, Hornbuckle confirmed receipt of the completed Property sale/Transfer out forms.
16. In January 2016, Hornbuckle asked Ms N and Mr S to confirm they were happy to use its panel solicitors. On 22 January 2016, Morton Fraser was appointed to act on behalf of Hornbuckle.
17. On 26 January 2016, Hornbuckle emailed Mr S and Ms N, asking them to confirm if the lease on the SIPP property was to be transferred to Mattioli Woods. Hornbuckle also asked whether all rent due had been paid to the SIPP, as it could not see that rent payments had been made to the SIPP bank account. Mr S responded on the same day and said all rent had been paid, and that he would confirm at a later date whether the lease was to be transferred.
18. On 27 January 2016, Hornbuckle emailed Mr S and Ms N to say, "You have also confirmed that the rental has been paid to date. Please can you confirm the account details that received the rentals?"
19. In February 2016, at Morton Fraser's request, Hornbuckle sent Ms N and Mr S Commercial Property Standard Enquiries forms to complete. It also chased a response to its outstanding queries.
20. On 3 March 2016, Mr S responded to Hornbuckle. He confirmed that there were no rent arrears, there were no breaches of the lease agreement, the loan was to be transferred and that all the necessary paperwork for this had been signed.
21. In April 2016, Hornbuckle asked Ms N to provide a contact for Lloyds, because Morton Fraser was not receiving any response from Lloyds.
22. In May 2016, Hornbuckle chased Mattioli Woods for outstanding forms and also received an update from Lloyds. In particular, Lloyds confirmed that its securities centre had been dealing with the title transfer request since February 2016.
23. On 12 May 2016, Ms N complained to Hornbuckle as she was unhappy about the time taken to transfer the SIPP.

24. On 31 May 2016, Ms N says she was informed by Morton Fraser that Hornbuckle was almost ready to transfer the SIPP. However, it was waiting for Lloyds to release the charge on the title of the SIPP property. At this point, Hornbuckle said it was expecting Lloyds to arrange a new loan facility with Mattioli Woods in order to settle the Loan which was still in place at that time.
25. In June 2016, Ms N says she began speaking to the various parties involved in the transfer directly. In doing so, she discovered that the delays were ultimately being caused by unpaid SDLT and non-registration regarding the lease the Company had with the SIPP. She contacted HMRC directly to try and resolve the issues. Ms N subsequently raised a complaint with Hornbuckle.
26. On 5 July 2016, Hornbuckle wrote to Ms N. The letter said:

“We currently have your complaint detailed as the timeframe [for] transferring the SIPP, including the in-specie transfer of the property, to your new pension provider, and the fees that have been applied whilst this transaction is ongoing.

At present, I understand that loans held with Lloyds Banking Group are currently being assigned to your SIPP with Mattioli Woods and that the in-specie transfer of [the SIPP property] has not yet completed.

As the transaction is still ongoing and you have indicated that you have further issues to bring to our attention, I do not feel it would be prudent to issue a formal complaint response at this time. I feel it would be beneficial to review the complaint detailed above alongside the additional comments you will be outlining once the property has been purchased. I would, however, be grateful if you could confirm you are in agreement with this approach.”
27. On 14 July 2016, Hornbuckle formally responded to Ms N’s complaint, and upheld it in part. Hornbuckle acknowledged that it had caused some minor delays at the beginning of the transfer process, as it had not made it clear enough to Mattioli Woods what documentation it required from it. This meant that Hornbuckle had to request additional information which added to the timescales. However, Hornbuckle said it could not calculate appropriate redress as the transfer was still ongoing.
28. In August 2016, Ms N instructed new solicitors to investigate the unpaid SDLT and unregistered lease issues.
29. In September 2016, Ms N says she heard from HMRC, and it provided her with a figure she could pay in order to settle matters.
30. From September 2016 to February 2017, there was a series of correspondence between various third parties about the figures provided by HMRC. In particular, Mattioli Woods’ solicitors discussed the fees at length with HMRC and Ms N’s solicitors, and there were further delays in HMRC providing responses.

31. In February 2017, the fees owed by Ms N were clarified. However, she could not afford to pay them immediately.
32. In the following months, Hornbuckle appointed a direct contact for Ms N and reassessed her complaint. It also came to light that there were rent arrears relating to the SIPP, as the Company had not been paying rent to the SIPP.
33. In June 2017, Hornbuckle informed Ms N that it still could not conclude its investigation into her complaint because the transfer was still not complete. However, it offered her £250 at this time for distress and inconvenience.
34. On 6 October 2017, notwithstanding the fact that the transfer was still not complete, Hornbuckle wrote to Ms N with a full response to her complaint. In summary, this said:-
 - In relation to the overall time for the transfer to complete, Hornbuckle confirmed that there was no set timeframe for an in-specie transfer, such as Ms N's, and that the SIPP's cash would be transferred last.
 - Hornbuckle conceded that there were several occasions where it was responsible for delays. However, it highlighted that the transfer was delayed largely due to other issues such as the unpaid SDLT, the unregistered lease and issues relating to the Loan.
 - In relation to the unpaid SDLT, Hornbuckle said it was not responsible for this issue and, in any event, the Company had been informed of the requirement to pay SDLT on the lease by Chubb Law in 2012. Hornbuckle said it had mistakenly told Ms N at one point that it would ensure the SDLT was paid from the SIPP's funds. It explained that this was because it initially believed the unpaid SDLT related to the SIPP property purchase. However, this was not the case.
 - In relation to the unregistered lease, Hornbuckle said it was not responsible for this issue and, in any event, the Company had been informed of the requirement to register the lease by Chubb Law in 2012.
 - In relation to repayment of the Loan, Hornbuckle said that Mattioli Woods had confirmed the Loan would need to be repaid before the transfer occurred. However, Ms N had informed it that the Loan would be transferred. It appeared this was not the case, and Hornbuckle understood Ms N had now appointed a financial advisor to help deal with the Loan. Hornbuckle added that, at one point, Lloyds had recalled the Loan and Hornbuckle had assisted Ms N in arranging a grace period for repayment so this did not happen.
 - In acknowledgement of its errors, Hornbuckle increased its offer of £250 to £500, for distress and inconvenience caused. It also offered to waive all fees applied to the SIPP from 2015 onwards, as well as Ms N's and Mr S' individual SIPPs. Lastly, it confirmed no fees would be applied going forward to any of the SIPPs.

Summary of Ms N's position

35. Ms N highlights that the transfer took years to complete, and she holds Hornbuckle responsible. In particular, she has said:-
- Hornbuckle ought to have been aware of the unpaid SDLT and unregistered lease, and it should have informed her so that she could have prevented or resolved these issues.
 - Hornbuckle ought to have paid the outstanding SDLT.
 - Hornbuckle ought to have made her aware that the SIPP was not receiving rent from the Company.
 - She had to become involved in order to ensure the transfer progressed.
 - Hornbuckle's staff were abusive towards her and this is evidenced by the fact it subsequently dismissed a member of staff after he spoke to her rudely.
 - Mattioli Woods was willing to accept the transfer even whilst there were rent arrears.
 - There were a number of failings by various third parties involved in the transfer.
36. Ms N has argued Hornbuckle should reimburse her for fees charged to the SIPP during the transfer period, fees charged by Mattioli Woods, penalties imposed by HMRC, all legal fees and the time she has spent dealing with this complaint.
37. Ms N has said her financial losses are in the region of £230,500, and, in addition, she has suffered significant distress and inconvenience.

Summary of Hornbuckle's position

38. Hornbuckle has accepted responsibility for initial delays with the transfer and it has offered Ms N £500 in respect of this, as well as a refund of fees. As the transfer was an in-specie transfer, there was no investment loss caused as a result of any delays.
39. Hornbuckle repeatedly told Ms N what needed to happen before the transfer could be completed, and it assisted her as far as possible throughout the transfer period.
40. Hornbuckle has previously apologised for how a member of staff spoke to Ms N. However, while this member of staff did subsequently leave the organisation, it was on his own terms and not connected to his engagement with Ms N.
41. Hornbuckle has allowed payments made to Lloyds in respect of the Loan, as well as other expenses incurred by the Company on behalf of the SIPP, to be used to offset some of the rent arrears.

42. Hornbuckle has confirmed that its offer to pay Ms N £500, and refund fees applied from 2015, is still available. In relation to the SIPP, these fees total £1,375 + VAT. In relation to Ms N's individual SIPP, these fees total £1,920 + VAT.
43. In addition, Morton Fraser's fees were also waived.

Adjudicator's Opinion

44. Ms N's complaint was considered by one of our Adjudicators who concluded that no further action was required by Hornbuckle. The Adjudicator's findings are summarised below:-
- Hornbuckle acknowledged that it caused some initial delay with the transfer, as it did not specify its requirements to Mattioli Woods at the outset. However, this delay was minor.
 - Hornbuckle awarded £500 to recognise the distress and inconvenience caused by these early delays.
 - Hornbuckle also realised it had incorrectly applied some fees, which it later refunded, as well as refunding further fees, that had been correctly applied, as a goodwill gesture.
 - The majority of the delays were caused by the missed rental payments, Lloyds' requirement for the Loan to be repaid before transfer, and the fact that the Company had not registered the lease or paid SDLT on it.
 - It was the Company's responsibility to ensure rent payments were made to the SIPP, in accordance with the lease. Hornbuckle cannot be held responsible for the additional delay caused by resolving this issue. In particular, the Adjudicator noted that Ms N had not instructed a property management company, and Hornbuckle does not provide this service. Hornbuckle was also informed incorrectly by Mr S that all rental payments had been made by the Company in early 2016.
 - When Ms N decided to transfer the SIPP, and so the SIPP property, Lloyds was within its rights to recall the Loan. Hornbuckle had no control over this.
 - It was not Hornbuckle's responsibility to tell Ms N about the SDLT due or registration needed for the lease. The Adjudicator noted that Ms N's solicitor informed her about these requirements in 2012 and 2013.
 - Ms N acknowledged to Hornbuckle that she did not have the finances to settle the various outstanding payments, but Hornbuckle cannot be held responsible for this.
 - Hornbuckle had the right to pause the transfer until the rent arrears were resolved, as these would result in unauthorised transactions incurring fines. As a

trustee of the SIPP, Hornbuckle would have been liable for these fines, even after the transfer, so it was reasonable for Hornbuckle to require a resolution to the rent arrears before the completion of the transfer.

- When opening the SIPP, Ms N agreed to Hornbuckle's fee schedule, and Hornbuckle is entitled to apply such fees while the SIPP is active. In any event, Hornbuckle has refunded all fees it applied from 2015 onwards.

45. Ms N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Ms N provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Ms N.

Ombudsman's decision

46. There is no dispute that there was a significant delay between when the transfer was first initiated in 2014 and when it finally completed, which I understand was in October 2019.
47. The transfer involved a number of parties who played a significant role but who are not involved in this complaint. While Ms N has said she holds Hornbuckle responsible, she has also said, in her submissions, that all parties have been poor at progressing matters and communicating with each other. I must emphasise that I am only considering Hornbuckle's actions in this matter.
48. The transfer request uncovered several issues which inevitably had to be resolved before a transfer could be completed. In particular, it brought to light the unpaid SDLT, the unregistered lease, the rent arrears and the Loan arrears. Together, these appear to have been the main cause of the transfer delay.
49. It is apparent that the Company did not have the finances to settle these matters when it was required to. Also, a decision was needed from Lloyds about what would happen with the Loan as a part of the transfer.
50. It is important to note that Hornbuckle's role was to administer the SIPP and fulfil the role of a bare trustee. It did not make investment decisions or direct any action in relation to the SIPP. Its role was to ensure the SIPP was administered in such a way as to comply with the relevant legislation and regulation. Beyond that, Hornbuckle took direction from the member trustees, Ms N and Mr S.
51. Ms N believes that Hornbuckle ought to have discovered and notified her of the unpaid SDLT and unregistered lease. I do not agree that this was Hornbuckle's responsibility. The SDLT was owed by the Company, and the Company was also responsible for registering the lease. Hornbuckle was the administrator of the SIPP and not responsible for these oversights.
52. In relation to the rent arrears, I find that the Company was responsible for paying rent to the SIPP and it ought to have been aware of its obligations to do so. In any event, I

do not find it would have made a difference if Hornbuckle had highlighted the rent arrears earlier in the process. This is evidenced by the fact that, when it enquired whether all rent payments were up to date in 2016, Mr S informed it in clear terms that there was nothing outstanding. This was despite Hornbuckle having highlighted the significance of outstanding arrears.

53. The rent arrears constituted unauthorised payments from the SIPP, which in turn would incur fines from HMRC. So, this issue had to be resolved before a transfer could take place. Although, Mattioli Woods may have accepted the SIPP with rent arrears did not absolve Hornbuckle of its responsibility to prevent unauthorised payments, nor would it have protected Hornbuckle from incurring the subsequent fines.
54. I find that it was reasonable for Hornbuckle to delay the transfer until the rent arrears were resolved and there were other outstanding issues at the time which remained unresolved.
55. In relation to the Loan, I find that the Company was responsible for the arrears which accrued, and this contributed towards the delays. With regard to what would happen to the Loan during the transfer, Hornbuckle was initially informed that it would be transferred and repayment was not necessary. Although, it later found out this was not the case. It was not responsible for how Lloyds decided to treat the Loan, or how long Lloyds took to do so. On the contrary, Hornbuckle took steps to assist Mattioli Woods in expediting matters with Lloyds.
56. So, from early 2015 onwards, the transfer was delayed while the unpaid SDLT and unregistered lease were investigated, and there were ongoing discussions about how the various arrears and the Loan would be dealt with. Much of this time, Hornbuckle was waiting for information, progress or updates from third parties.
57. Hornbuckle's involvement throughout these periods was minimal, but this was appropriate in the circumstances. I do not find that Hornbuckle ought to have been more involved when third parties were dealing with certain requests, or that it ought to have taken steps to expedite the investigation of third parties. Its actions do not amount to maladministration.
58. There was some delay, particularly between July 2014 and December 2014, which Hornbuckle could have prevented. Hornbuckle has agreed it could have done more to progress the transfer at certain times, especially in the initial stages. However, the offer Hornbuckle has made in relation to this, amounting to several thousands of pounds, is, in my view, very generous.
59. Furthermore, Ms N's transfer was an in-specie transfer, so her funds remained invested throughout the entire period, and she did not suffer any loss of investment return.

60. Ms N has requested redress for the time she has spent dealing with this complaint, and the solicitors she has instructed to assist her in the matter. However, I would expect a SIPP member to spend a certain amount of time dealing with matters relating to their SIPP without being compensated for it. The issues which may have required a substantial amount of Ms N's time, and which have been investigated by her solicitors, are issues for which I do not hold Hornbuckle responsible.
61. I do not uphold Ms N's complaint. If she wishes to accept Hornbuckle's offer, she should contact Hornbuckle directly.

Anthony Arter

Pensions Ombudsman
18 February 2021