

## Ombudsman's Determination

Applicant	Mr E
Scheme	Barnett Waddingham SIPP ( <b>the SIPP</b> )
Respondent	Barnett Waddingham SIPP LLP ( <b>BW</b> )

## Outcome

1. I do not uphold Mr E's complaint and no further action is required by BW.

## Complaint summary

2. Mr E's complaint concerns the tax liabilities he incurred following the conversion of a property in the SIPP (**the Property**) from commercial to residential (**the Conversion**). He would like BW to accept that it gave him poor advice and support, and to also accept responsibility for the tax liabilities.

## Background information, including submissions from the parties

3. In December 2011, following advice from an independent financial adviser (**IFA**), who did not work for BW, Mr E invested in the SIPP. BW is the administrator and Trustee of the SIPP. After the commencement of the SIPP, Mr E tried to purchase some agricultural land, but the sale did not go ahead as the plot was deemed unsuitable by BW. This was because the piece of land was not commercial but belonged to a residential property.
4. In July 2013, the SIPP purchased the Property. At the time, the Property was used for commercial storage, but it had planning permission for it to be converted to two residential dwellings.
5. On the property purchase questionnaire (**the Questionnaire**) that Mr E signed on 6 June 2013, he ticked that the Property did not have a residential element. On the Questionnaire Mr E also said:

"...The short term plan is to make improvements to the roof, windows and insulation and offer the present tenant a short term rental.

The long term plan is to apply to Kings Lynn and West Norfolk Council for a change of use from commercial to one residential property. If this is not successful the Hall will be converted into two residential apartments...Before completion of the residential conversion/occupancy the property will be sold..."

6. In October 2013, Mr E commenced converting the Property to a residential dwelling. Following this, Mr E sent BW an invoice for the VAT returns between 1 November 2013 and 31 May 2014.
7. On 28 July 2014, BW wrote to Mr E and said:

“...I am aware that you are undertaking a project to develop the SIPP owned property and convert from current use as commercial premises to a residential dwelling. I appreciate there are likely to be many further such expense requests, so I thought it would be a good idea to set out the two main option [sic] available to you. This will ensure we can settle expense request [sic] far more efficiently ongoing...”
8. On 8 June 2018, Mr E informed BW that he wished to sell the Property. This resulted in exchanges between BW and Mr E concerning the VAT payable on the sale. There were also exchanges between Mr E and his IFA concerning him selling/leasing the Property.
9. On 27 June 2018, Mr E instructed his solicitor to inform BW of his intention to lease the Property. Mr E had the Property valued, and on 13 September 2018, he sent the valuation to BW.
10. Following this there were further exchanges between Mr E, his IFA and BW concerning the Property. On 3 December 2018, Mr E had a meeting with his IFA and BW. On 24 December 2018, BW wrote to Mr E. In summary it:
  - informed him of the taxation consequences following the Conversion;
  - informed him that the Property needed to be disposed of;
  - informed him that rental income needed to be charged on the Property;
  - detailed the results of its enquiries concerning the VAT issue and appointment of an IFA; and
  - detailed the additional information it required from Mr E.
11. Subsequently, there were further exchanges between Mr E and BW concerning the rental income from the property, the sale of the property, the proceeds of the sale and the tax liability.

12. On 21 April 2019, Mr E complained to BW. In summary he said:-

- The Property had outline planning consent for a change of use to residential in 2011, which was prior to the recommendation of his IFA to place this asset into a SIPP.
- The Property was bought by BW, which was provided with the sale particulars in the first instance showing the market value of the Property, and that there was residential planning consent. At that point, BW should not have allowed the purchase of the Property to go ahead.
- An analysis and recommendation report (**the Report**) his IFA prepared in 2015 said:

“The property purchased within your SIPP is in a state of disrepair at the moment. You purchased the property for £105,000 and it is in need of both new roof and floors... you feel that by spending around £45,000 on renovations that property will be in a good state to either sell for around £200,000 or you will rent it out which ever happens first.”

- The Report did not say that renting the Property would not be allowed within the SIPP.

13. On 9 May 2019, BW replied to Mr E’s complaint. It provided the definition of a residential property as detailed within HMRC’s Pensions Tax Manual. It also provided some additional comments, and these are summarised below in Paragraphs 14 to 24.

14. From the information supplied to it at the time the Property was acquired, it was clear that none of the definitions of a residential property applied. Mr E completed the Questionnaire requesting that it considered the purchase of the Property. In the Questionnaire, Mr E described the property as a “Warehouse (Storage for local shop)” and said:

“The hall is used by the present owner’s grandson for storage of windsurfing and water sports equipment. The short term plan is to make improvements to the roof windows and insulation and offer the present tenant a short term rental.”

15. The use of the Property for a warehouse or storage would not meet one of HMRC’s definitions of a residential property. The building was clearly not being used as a dwelling. It was also clearly not suitable for use as a dwelling, as demonstrated in the various pictures that were on the sales particulars produced by the Estate Agents.

16. BW allowing the Property to be acquired within the SIPP did not give rise to the tax liabilities that were due. The holding of a property with residential planning permission within a SIPP would not of itself, give rise to any taxation. The tax liabilities due had arisen because of the Conversion. There clearly could not be an argument that the Property was not now suitable for use as a dwelling, given the fact that the Property had been let out by Mr E’s wife as a holiday home.

17. At no point had Mr E advised it that any substantive conversion works of the Property were underway, nor of Mr E's wife's intention to let the Property out. Mrs E had no interest in the Property and so was not legally entitled to let it out. BW and Mr E were the legal registered owners of the Property, so neither works to the Property, nor letting of it could occur without its consent. Had Mr E consulted with it on these points, it could have guided him and helped him to avoid the situation that he was now in.
18. It considered the extent to which it knew about the Conversion, and any guidance or warning it had given to Mr E. In this regard it said that it was aware of his intention to convert the property from the comments he had made in the Questionnaire (see paragraph 5 above).
19. From Mr E's comments, it was clear that he was aware of the need to sell the Property from the SIPP prior to the Conversion. BW had written to Mr E's solicitor on 26 July 2016 and said:

"To clarify, the SIPP should not own residential property and therefore, the sale should be completed prior to any redevelopments being completed which could mean that the property can be considered a habitable dwelling."
20. At the time of the acquisition of the property, there were various exchanges with Mr E's solicitor also indicating that residential property could not be held in the SIPP. There was a note on Mr E's file, dated 4 September 2013, of a conversation between Mr E and BW that indicated the issues with holding a residential property in the SIPP were discussed with him.
21. There was also some correspondence on file, between BW and Mr E's IFA, when the purchase of the Property was originally requested. This correspondence indicated an awareness on the part of the IFA that conversion of the Property could not be completed while under the ownership of the SIPP. It was clear that Mr E, his IFA and Mr E's solicitor were all aware that residential property could not be held in the SIPP, and that conversion could not be completed while the SIPP arrangement owned it.
22. In his complaint, Mr E also appeared to be stating that renting out the Property would not be allowed within his SIPP. However, it was the holding of a residential property within the SIPP that was the primary issue, rather than the letting of it. The only consequence of letting the Property out was in the calculation of the tax due.
23. Tax is payable on the higher of a deemed income of 10% from letting the Property and the actual income earned. Even if the Property had not been let out, tax would have still been payable on the deemed income of 10%. In Mr E's case, the actual income obtained was less than the 10% deemed income, so letting the Property did not have any effect on the amount of tax due.
24. The decision of BW to allow Mr E to purchase the Property within the SIPP was not a factor that gave rise to the tax liabilities that were due. The tax charges that fell due at the time, on both Mr E personally and on his SIPP, resulted from him holding a

residential property in the SIPP. These charges were not incurred as a result of holding a property with residential planning permission.

### **Summary of Mr E's position**

25. In February 2015, he had a meeting with his IFA and the IFA confirmed that he could convert the Property to residential and either sell or rent it out. In June 2016, he notified BW that he intended to sell the property to his wife. A professional valuation was undertaken and a price of £145,000 agreed. The sale did not go through because the Property was still classed as commercial and was subject to 20% VAT which made it unaffordable for his wife.
26. In January 2017, he had a meeting with his IFA. This was not very helpful and he felt frustrated and out of his depth. He needed advice about his pension but was not receiving it. In April 2017, he decided to pay for some advice from a new IFA as he was not happy with the level of service he had received from his old IFA and BW. He wanted to move the SIPP to a new provider.
27. He discussed his situation with the new IFA and was informed that the SIPP should be moved to an alternative provider. He was also advised to sell the Property before transferring the SIPP, as the transfer of property would be difficult. He also discussed the VAT liability on the Property, and his new IFA provided him with the best solution to put forward to BW.
28. He forwarded the VAT solution to BW but did not receive a response. He telephoned BW and it suggested that his old IFA should have been helping him to sort out this issue.
29. Following this there were several exchanges between him and his old IFA between June 2017 and 18 December 2017. On 5 February 2018, he met with his old IFA and discussed selling the Property to his wife, before he retired from his job on 31 March 2018. Due to the time scale and his workload, the IFA indicated there was insufficient time to process the sale of the Property.
30. On 28 March 2018, he had another meeting with his old IFA. They again discussed the sale of the Property and he told the IFA how frustrated he was with its lack of support throughout. He asked the IFA if the company he had recently established could lease the Property in the SIPP rather than selling it. The IFA thought that this was a good way forward.
31. He and his wife had worked hard and used their own money to bring the Property up to a standard permissible to rent out before the lease commenced. He had the Property revalued for selling or for leasing, as instructed by BW, and forwarded the valuations to BW on 13 September 2018.
32. BW responded informing him that he had broken SIPP rules and would be liable for tax charges, due to the property being converted to residential. The meeting he had with the IFA and BW on 3 December 2018, was "totally one-sided." He was made to

feel like a criminal and liable to serious life changing tax charges which made him feel physically sick. He explained that “surely” it was not all his fault but it “fell on deaf ears”.

33. After 1 January 2019, he and his wife felt very low and depressed; they had to find a way to sell the Property by 5 April 2019, to avoid extra tax charges. They decided the only way to do this was for his wife to buy the Property. His wife became ill from the stress and dealing with the Property purchase became more difficult. She raised enough money to purchase the Property but when BW sent the invoice, it included VAT which added another £37,000. They managed to borrow enough money to complete the purchase on 4 April 2019.
34. After the purchase completion he raised complaints against both the IFA and BW regarding: (i) the way the SIPP had been managed; (ii) the lack of correct advice; (iii) the lack of support; and (iv) the assertion that the tax liability was all down to him.
35. He had purchased the Property with the goal of converting it into residential which was explained from the start. His new IFA had informed him that the SIPP provider it used would not have allowed any commercial property with residential planning permission into a personal SIPP. If this was correct, he should not have been allowed to go along this route in the first place.
36. He received a very poor level of service from his old IFA, with no advice and support when most needed. Some of the advice he received from the old IFA was contrary to the SIPP rules BW adhere to.
37. The SIPP was in his and BW’s names. He may have inadvertently not adhered to all the SIPP rules but this was purely out of ignorance and lack of guidance. He has never knowingly conceived to do anything fraudulently in order to gain tax advantages. He has paid PAYE all of his working life and had never been in any compromising situations such as this. This has affected his health, well-being, and relationship. He has been made to feel like it was all his fault.
38. He has been the layman in this situation. The experts have let him down. The cost of the problem has led him to reconsider his semi-retirement and he was now looking for full-time employment.

### **BW’s Position**

39. BW reiterated the points it had made in its letter of 9 May 2019, in response to Mr E’s complaint, but added that in respect of all property related expenses paid by the SIPP, none of the items or services paid for constituted a conversion to residential property.

## Adjudicator's Opinion

40. Mr E's complaint was considered by one of our Adjudicators who concluded that no further action was required by BW. The Adjudicator's findings are summarised below:-

- It was unfortunate that Mr E had completed the Conversion while the Property was still in the SIPP. However, his decision to do so did not result from any maladministration by BW.
- It was clear that when Mr E purchased the Property, it had planning permission to be converted into a residential property. In the Adjudicator's view, the Property having planning permission to be converted from commercial to residential did not prevent Mr E from holding the property in the SIPP. So, there was no maladministration by BW in allowing the Property, pre-conversion, to be held in the SIPP.
- In the Adjudicator's opinion, it was Mr E's decision and subsequent action to complete the conversion of the Property from commercial to residential, while the Property remained in the SIPP, that had caused him to incur tax liabilities. In the Adjudicator's view, on the balance of probabilities, Mr E knew he could not hold residential properties in the SIPP. This was because on the Questionnaire that he completed, Mr E had said that the property would be sold prior to the Conversion.
- The Adjudicator had not seen any evidence that, prior to the completion of the Conversion, Mr E had discussed the consequences of doing so with BW. In the Adjudicator's view, on the balance of probabilities, had Mr E had such discussions with BW, it would have reminded him that the SIPP could not hold a residential property. This was because BW had previously prevented the purchase of land into the SIPP as it was deemed to be residential. Further, when BW became aware that the Conversion had been completed, it arranged a meeting with Mr E to discuss the tax consequences.
- It was unfortunate that Mr E incurred tax liabilities because of the Conversion. In the Adjudicator's view, Mr E had not incurred these liabilities because of BW's maladministration. BW could not be held responsible for: (i) Mr E's decision in this regard; or (ii) any financial consequences Mr E incurred as a result of his decision to complete the Conversion while the Property was still in the SIPP.

41. Mr E did not accept the Adjudicator's Opinion and in response said in summary:-

- From the beginning of the review, it was clear that the Adjudicator had not grasped the basics of the case by referring to an IFA. The IFA referred to is actually the National Farmers Union Mutual (**NFU Mutual**) which had been his pension provider for 36 years.
- The NFU Mutual was his adviser regarding the SIPP and the purchase of the Property. He had made it clear to the NFU Mutual that his intention was to convert

the commercial property to residential. These facts were forwarded to The Pensions Ombudsman in the first instance. He has provided evidence that the NFU Mutual and BW were working together to provide SIPPs.

- As the administrator of the SIPP, BW should have made sure the NFU Mutual had given the correct advice in the first place. BW never sent one of its advisers to discuss the SIPP. All one to one meetings he had were with the NFU Mutual. The only exception was the meeting on 3 December 2018, when things had already gone wrong and no NFU Mutual representative was available for advice.

42. As Mr E did not accept the Adjudicator's Opinion, the complaint was passed to me to consider. Mr E's further comments do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mr E.

### **Ombudsman's decision**

43. My Office has previously informed Mr E that I am unable to investigate his complaint against the NFU Mutual because it is a financial adviser.
44. Mr E asserts that the Adjudicator did not grasp the basics of the case as she referred to an IFA when his adviser in relation to the purchase of the Property was the NFU Mutual. I find that as NFU Mutual is regulated by the Financial Conduct Authority and: (i) is authorised to provide advice on investments and personal pensions; (ii) was Mr E's financial adviser in this regard; (iii) and was independent from BW, it was reasonable for the Adjudicator to have referred to it as Mr E's IFA in the Opinion.
45. The SIPP is marketed for NFU Mutual clients. BW is the operator of the SIPP and is a non-trading company and bare trustee. This means that its sole purpose is to hold the assets for the benefit of the members.
46. The SIPP is administered in accordance with the Terms and Conditions (the **T&Cs**). Part 5 of the T&Cs makes clear that BW acts on an execution only basis and is "not... responsible for giving, and shall not be deemed to have given, any legal, financial, investment, tax or any other advice in connection with your...[SIPP] or any underlying investments or decisions associated with it."
47. Part 9 of the T&Cs states, under the heading Commercial property: "If you want to invest in **commercial property** (my emphasis) through your [SIPP] please read our Property Guide before proceeding."
48. Part 16 of the T&Cs states: "Neither we nor the trustee shall be liable to you for any claims, costs, expenses, losses, liability, default or delay arising to your [SIPP] and its underlying investments unless this is caused by our wilful neglect, wilful default or fraud."
49. Mr E is not in his current situation because of any maladministration by BW. As Part 5 of the T&Cs make clear, BW was not Mr E's adviser in relation to the purchase of the Property. It was the responsibility of Mr E's IFA, in this case NFU Mutual, to discuss



Mr E's intentions with him and decide if the SIPP was the appropriate pension arrangement to fulfil his intentions. It was not BW's responsibility to do so.

50. SIPPs can directly hold commercial properties such as offices, shops or industrial units, but residential property is not permitted, except as referred to in paragraph 51 below.
51. There are some exceptions to the rules which allow specific types of residential property to be held. For example, a SIPP can hold commercial property with a view to converting it to residential property. However the SIPP must sell the property before it is used, or suitable for use, as a residential dwelling.
52. These exceptions are tightly controlled by HMRC, and challenging to administer, which is why some SIPP providers prefer to steer clear of property containing any residential element.
53. I find there was no maladministration by BW in allowing Mr E to hold the Property in the SIPP prior to the completion of the Conversion. The Property was deemed a commercial property at the time that it was purchased by the SIPP and no indication was given by Mr E at that time that he intended to convert it for residential use, while it remained in the SIPP.
54. BW made clear that only commercial property could be held within the SIPP and the evidence shows that Mr E and his advisers were aware of this. It was the completion of the Conversion of the Property, while it remained in the SIPP that resulted in Mr E incurring tax liabilities.
55. Mr E did not make BW aware of the completion of the Conversion until after the fact. Consequently, BW cannot be held responsible for any tax liabilities Mr E incurred as a result of the Conversion.
56. I do not uphold Mr E's complaint.

**Anthony Arter**

Pensions Ombudsman  
30 June 2022