

Ombudsman's Determination

Applicant	Mr W
Scheme	Suffolk Life MasterSIPP (the SIPP)
Respondent	Curtis Banks

Outcome

1. I do not uphold Mr W's complaint and no further action is required by Curtis Banks.

Complaint summary

2. Mr W complained that Curtis Banks removed a fee discount that he was told was permanent when he transferred his benefits from the European Pensions Management Scheme (**the Scheme**) to the SIPP. Mr W said that the permanent discount was the reason he went ahead with the transfer to the SIPP, and he understood that by accepting the offer, he entered into a contract, which Curtis Banks had broken.
3. Mr W asked for the permanent discount to be reinstated.

Background information, including submissions from the parties

4. Mr W was invested in the Scheme, administered by European Pensions Management Limited (**EPML**).
5. In 2016, EPML entered special administration.
6. On 9 November 2016, Suffolk Life sent a letter to Mr W (**the 2016 Letter**) to inform him that Suffolk Life had taken over the Scheme and would start winding it up on 5 December 2016.
7. The 2016 Letter made the following points:-
 - It invited Mr W to transfer the Scheme to the SIPP, or to another pension provider, free of charge.

- It included a transfer pack, which included the following documents for the SIPP: key features, personal illustration, schedule of fees (**the Schedule of Fees**), schedule of allowable investments and terms and conditions dated October 2016 (**the 2016 T&Cs**).
 - As the SIPP's standard administration charge was higher than the Scheme's administration charge, Mr W was offered a permanent discount of £375 + VAT per annum, which would result in him paying £170 + VAT per annum.
 - According to its records, Mr W did not have a financial adviser.
 - As the Scheme was winding up, if it did not hear from him by 5 December 2016, he would automatically be transferred to the SIPP. However, until he signed the SIPP's application form, it would not be able to collect contributions, take investment instructions or accept further designations to drawdown.
8. The Schedule of Fees stated that the SIPP's annual administration charge was £545 + VAT. It referred to the 2016 T&Cs for how it could increase its fees.
 9. An extract from the 2016 T&Cs "Section 26 – Variation and termination" is set out in the Appendix.
 10. Mr W's benefits in the Scheme were transferred to the SIPP (**the Transfer**).
 11. In 2017, Suffolk Life became part of Curtis Banks
 12. On 27 August 2019, Curtis Banks wrote to Mr W with the following points:-
 - Due to increases in administration costs, including higher regulatory fees and other industry levies, and the cost of improvements to the SIPP, it was removing the permanent discount.
 - It wanted to ensure that customers only paid for services they required.
 - Mr W's annual administration charge would increase to £560 + VAT from 1 October 2019. He would also need to pay an additional £100 + VAT per annum as he did not have a financial adviser. Further fee information was available on Curtis Banks' website.
 - Mr W was offered the option to switch to another lower cost product with Curtis Banks, Your Future SIPP (**YFS**), or an alternative pension provider. It offered to waive its £250 transfer fee if he requested a transfer form within 30 days and returned it within a further 90 days.
 13. On 1 September 2019, Mr W wrote to Curtis Banks to ask for clarification about the removal of the permanent discount.

14. On 5th September 2019, Curtis Banks replied. It said that the 2016 T&Cs allowed fees and charges to be increased for a number of reasons, including to meet regulatory requirements and legitimate cost increases, subject to providing customers with written notice.
15. On 6 September 2019, Mr W telephoned Curtis Banks. He complained about the fee increase. He believed that following the transfer from EPML, the permanent discount should be maintained. He asked for a response within one week.
16. On 9 September 2019, Mr W telephoned Curtis Banks for an update. It said that it was still dealing with his complaint. Mr W asked what steps he could take if he was not satisfied with the response.
17. On 10 and 12 September 2019, Curtis Banks emailed Mr W and said that it was still considering its response. Mr W asked Curtis Banks for its definition of the word permanent.
18. On 19 September 2019, Mr W requested an update. On the same day, Curtis Banks sent Mr W a factsheet about dealing with complaints.
19. On 23 September 2019, Curtis Banks wrote to Mr W with the following points:-
 - As it did not know what assets Mr W had been invested in when he first transferred to the SIPP, and the SIPP had offered Curtis Banks' widest investment options, it had determined that the SIPP was most likely to be able to accept his investments.
 - It believed that the lower cost YFS would be suitable for the majority of the SIPP customers at a lower cost. However, as Mr W held investments with National Savings and Investments, which were non-standard investments, he could not transfer to the YFS.
 - It apologised if Mr W believed Curtis Banks had gone back on its agreement on the permanent discount.
 - The 2016 T&Cs stated that charges could be increased annually in line with Average Weekly earnings. It also stated that Curtis Banks could make wider changes to product and fee structures, providing it gave customers 30 days' notice. It had informed Mr W of the changes on 27 August 2019, and they came into effect on 1 October 2019, so it had given the required notice.
 - If a customer wanted to transfer away, it would waive the transfer out fee.
20. On 24 September 2019, Mr W telephoned Curtis Banks. He said that he was dissatisfied with the outcome of his complaint, and it had not confirmed its understanding of the word permanent. He said that he would submit his complaint to The Pensions Ombudsman (**TPO**).

21. After receiving an invoice from Curtis Banks, on 5 October 2019, Mr W wrote to Curtis Banks. In his opinion, the invoice amount of £792 (£560 + £100 + VAT) should be reduced by the permanent discount of £375 + VAT.
22. On 14 October 2019, Curtis Banks replied to Mr W's letter. It confirmed that it would no longer apply the permanent discount to his fees and his invoice was correct.
23. In October 2019, Curtis Banks replaced the 2016 T&Cs with new terms and conditions (**the 2019 T&Cs**).
24. Section 18.7 of the 2019 T&Cs states the following:

“If at any time the notional credit balance on your SIPP bank account records is not enough to cover all such costs and liabilities in full, we may require you to dispose of investments.....so that all amounts due can be paid.....If you do not comply with these requirements, we may direct the trustee to dispose of investments in accordance with our order of disposal policy in order to pay the amounts due.....”
25. During TPO's investigation, it suggested to Curtis Banks that the requirements had been met to establish a remedy for Mr W by way of Estoppel by Representation, and Curtis Banks should honour the permanent discount. Estoppel by Representation prevents a party from saying that a set of facts or situation is untrue when it previously said they were true. Curtis Banks did not accept this position. TPO also said that Estoppel by Representation would not prevent Curtis Banks from applying alternative fees to cover costs that it was not aware of at the time of the Transfer.

Adjudicator's Opinion

26. Mr W's complaint was considered by one of our Adjudicators who concluded that no further action was required by Curtis Banks. The Adjudicator's findings are summarised below:-
 - The use of the word permanent was unfortunate as it suggested that the discount would remain for the lifetime of the SIPP. However, it was not sufficient to guarantee perpetuity of the discount without first considering whether the 2016 T&Cs permitted Curtis Banks to remove the discount.
 - The 2016 T&Cs overrode any contract implied by the original fee discount offer made by Suffolk Life. Also, any subsequent confirmation of the fee discount by Suffolk Life, together with Curtis Banks' application of the discount, did not form a legally binding contract that overrode the 2016 T&Cs.
 - Section 26.2 of the 2016 T&Cs detailed the circumstances under which Curtis Banks was permitted to make changes. These included a proportionate response to legitimate cost increases, meeting regulatory requirements and providing for the introduction of new or improved systems and services.

- The reasons given by Curtis Banks for removing the fee discount could not be considered to be disproportionate or invalid. It was adjusting Mr W's fees so that they were the same level as its other customers with similar investments to him.
- Curtis Banks gave Mr W more than 30 days' written notice of the change, as required under section 26.3 of the 2016 T&Cs. In addition, as referred to in section 26.4 of the 2016 T&Cs, it offered to waive its transfer out fees if he chose to transfer to another pension provider.
- The changes made by Curtis Banks were not as a result of maladministration but were a business decision that it was permitted to make. So, Curtis Banks was permitted, under section 26 of the 2016 T&Cs, to remove Mr W's fee discount. This was consistent with the position that the Pensions Ombudsman (**the PO**) had taken in another case, CAS-42040-W3P6¹, which had close similarities to Mr W's complaint and was determined in May 2021.

27. Mr W did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr W's comments are summarised below:-

- He referred to TPO's suggestion of Estoppel by Representation to Curtis Banks and queried why this was no longer applicable.
- Curtis Banks had used "intimidatory tactics" with him. He had paid all invoices apart from the permanent discount. He explained this in letters to Curtis Banks when paying each invoice. In March 2021, Curtis Banks told him that it would sell assets, but then agreed not to use the cash to settle outstanding invoices. In July 2023, Curtis Banks told him that it would "ringfence" £5,000 in cash from a further asset sale to cover current and future invoices. When the proceeds settled, Curtis Banks "looted" the whole amount.
- He was not seeking an additional award, just the reinstatement of the permanent discount.

28. I have considered Mr W's comments, but they do not change the outcome. I agree with the Adjudicator's Opinion.

Ombudsman's decision

29. Mr W's complaint concerned the removal of his fee discount that he was told would be permanent. He understood that by accepting the discount, he had entered into a contract, which Curtis Banks had now broken.

¹ <https://www.pensions-ombudsman.org.uk/sites/default/files/decisions/CAS-42040-W3P6.pdf>

30. I sympathise with Mr W's position, and I understand why he might believe that his complaint could potentially be supported by Estoppel by Representation. However, in this case, Estoppel by Representation cannot be considered in isolation. I also need to consider the extent to which the fees could be legitimately changed in accordance with the 2016 T&Cs, which were also communicated to Mr W at the same time, and subsequently replaced by the 2019 T&Cs.
31. Section 26.2 of the 2016 T&Cs states that Curtis Banks could amend terms by giving at least 30 days' written notice of the change. I appreciate that the permanent discount mentioned in the 2016 Letter is not a specific term contained in the 2016 T&Cs, but I presume this is because not all members of the SIPP were transferred from the Scheme, so the discount did not apply to everyone. On this basis, I find that section 26.2 was meant to cover all terms applicable to the SIPP, and so takes precedence over the 2016 Letter.
32. I am satisfied that Curtis Banks provided Mr W with more than 30 days' notice of the removal of the discount, and the reasons for its removal are included within the items covered in section 26.2 paragraphs a) to f) of the 2016 T&Cs.
33. For these reasons, I find that Curtis Banks was within its right to make the fee change by withdrawing Mr W's discount.
34. Mr W also submitted that Curtis Banks had been intimidating when attempting to recover outstanding payments from him in 2021 and 2023. This included Curtis Banks selling some of his assets in the SIPP and using the cash to settle his invoices. However, I note that section 18.7 of the 2019 T&Cs allows Curtis Banks to take this action in the event there is insufficient cash in Mr W's SIPP bank account to pay his invoices.
35. If Mr W believes that Curtis Banks' fees without the discount are too high, he has the option to transfer to an alternative provider.
36. I do not uphold Mr W's complaint.

Dominic Harris

Pensions Ombudsman
4 March 2024

Appendix

Extract from the Suffolk Life MasterSIPP – Terms and Conditions (October 2016)

Section 26 – Variation and termination

26.1 These terms will apply until:

- a. you cease to be a member of the scheme with a Suffolk Life MasterSIPP;
or
- b. we amend these terms.

26.2 We may amend these terms by written notice to you for any of the following reasons:

- a. to reflect in our reasonable opinion a proportionate response to:
 - i. changes in general law or decisions of the Financial Ombudsman Service or the Pensions Ombudsman or the Financial Services Compensation Scheme;
 - ii. a court order or decision affecting the terms;
 - iii. legitimate cost increases or reductions associated with providing the scheme and your SIPP.
- b. to meet regulatory requirements;
- c. to reflect new industry guidance and codes of practice which raise standards of consumer protection;
- d. to reflect a change in our corporate structure that doesn't have an unfavourable impact on your SIPP but which does require us to make certain changes to the terms;
- e. to provide for the introduction of new or improved systems, methods of operation, services or facilities associated with providing the Suffolk Life MasterSIPP; or
- f. to correct any mistake in the terms, provided the correction does not reduce any rights you have as a result of the mistake.

26.3 Where these terms are to be amended under paragraph 26.2 we will give you as much notice as is reasonably possible in the circumstances, which will generally be at least 30 days' written notice the change.

- 26.4 We may also change these terms if we have any other valid reason for doing so. We will give you at least 90 days written notice. If the change has a significant unfavourable effect on your rights under your SIPP, you may within 90 days of receiving notice of the amended terms request a transfer of your SIPP in accordance with paragraph 15.1. In such circumstances, we will not charge you any fee in respect of the transfer, although you will be responsible for any other costs.
- 26.5 Where these terms are amended, we may notify you where the revised terms can be accessed via our website. Paper copies of the terms will be available on request.
- 26.6 We may after giving you at least six months' prior written notice, require you to transfer the investments and cash held in respect of your SIPP net of any liabilities (less the amount required to satisfy all charges due to us and all costs chargeable to your SIPP) to another registered pension scheme chosen by you. Investment transactions already initiated by us will be completed. We will not charge you any fee or any costs in respect of this transfer.
- 26.7 We may ask you to transfer your SIPP in accordance with the provisions of paragraph 26.6 for reasons including but not limited to the following;
- a. changes in legislation;
 - b. where the scheme becomes too expensive for us to operate;
 - c. if we make an alternative scheme available that provides the same benefit; or
 - d. if the registration of the scheme is removed by HMRC.

We also reserve the right to ask you to transfer your SIPP in accordance with paragraph 26.6 in those cases whereby in our reasonable opinion your behaviour is deemed inappropriate or unreasonable, including but not limited to abuse, offensive and/or threatening language or action.

- 26.8 If you fail to comply with the requirements made under the above paragraph 26.6, we may treat you as having instructed us in writing to encash the whole of your SIPP and to transfer the cash proceeds (less the amount required to satisfy all charges due to us, all costs chargeable to your SIPP and all liabilities of your SIPP) to such other registered pension scheme as we in our discretion may choose and you authorise us to execute any documentation on your behalf necessary to do so.