

## Ombudsman's Determination

Applicant	Mr R
Scheme	The Hartley Berkeley Burke PPP ( <b>the SIPP</b> )
Respondent	Hartley Pensions Ltd ( <b>Hartley</b> )

## Outcome

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

## Complaint summary

2. Mr R's complaint against Hartley is that:
  - it has failed to provide a correct value of the assets in the SIPP;
  - it has delayed the re-registration of assets in the name of the SIPP;
  - interest payable to the SIPP bank account has been retained
  - it is unclear what fees are being charged; and
  - it has delayed collecting the investment maturity from Dolphin Capital (**Dolphin**).

## Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the key points. I acknowledge there were other exchanges of information between all the parties.
4. Mr R's date of birth is 20 March 1962. The SIPP, originally called the Berkeley Burke PPP, was initially established with Berkeley Burke SIPP Administration Ltd (**BBSAL**) in 2012.
5. BBSAL was placed into administration on 18 September 2019. Hartley acquired the rights to purchase the SIPP assets from BBSAL on the same day and these were re-registered to a new arrangement titled the Berkeley Burke Pension Scheme.
6. On 14 May 2012, BBSAL wrote to Mr R enclosing a New Member Pack, Cooling Off notice, Schedule of Fees, Deed of Appointment and Key Features Document (**the 2012 KFD**).

7. The 2012 KFD stated, under the heading “When do I pay the annual fee”:

“We will withdraw the annual fee from your account on a yearly basis, a year from when your Berkeley Burke PPP was established”.
8. Included in the New Member Pack was a Schedule of Fees. This showed that an annual fee of 1% of the value of the SIPP was payable, with a maximum charge of £500 plus VAT for a SIPP with a value greater than £50,000 and a minimum of £150 plus VAT where the value was less than £15,000. Fees were payable in advance.
9. The Schedule of Fees also detailed certain specific activities where additional fees would be payable.
10. Mr R signed the Schedule of Fees on 18 April 2012, thereby agreeing to be bound by the terms.
11. Clause 3.4 of the original Terms and Conditions (**the 2012 T&Cs**) stated:

“Being able to accurately value your Berkeley Burke Pension Scheme is dependent on receiving the correct information from the third party providers...We will not be held responsible for any delays in being able to provide you with valuations due to information not being received in a timely and accurate manner from a third party”.
12. Clause 9 of the 2012 T&Cs is headed ‘Charges’. It states:

“9.1 The administration charges are detailed in the Key Features Document...By signing the application form you are agreeing to both the initial and ongoing charges...

9.4 Our fees will be due for as long as you hold a Berkeley Burke Pension Scheme product, even if the investments held are illiquid”.
13. Clause 14 of the 2012 T&Cs states:

“We may increase fees annually by percentage, not materially exceeding the percentage increase in the monthly National Average Earnings Index (NAE) over the previous year.”
14. Mr R’s funds were primarily invested as follows:-

• Green Oil Plantations	£30,250
• Akbuk Harmony Bay	£79,500
• Walsall Burial Park	£50,400
• Dolphin Loan Notes	£21,000
• Dolphin Loan Notes	£11,000
15. On 19 June 2019, Mr R requested a pension drawdown illustration. He was told that, based on a fund value of £136,000, he was entitled to a tax-free cash sum of £34,000 together with a residual annuity of £5,750.

16. Mr R accepted the figures. However, on 4 July 2019, BBSAL wrote to him to say that the illustration was based on the last known value or cost price for most of the investments. It apologised for the fact a full explanation had not been given and that the illustration did not give a clear picture of the benefits he could take. It went on to say that the value of the SIPP bank account was £1,133.34, that it was unable to obtain a value for the Akbuk Harmony Bay investment and was trying to value the Walsall Burial Park asset.
17. On 8 July 2019, BBSAL wrote to Mr R to tell him that it had chased Dolphin, which was now called the German Property Group (**GPG**) for a detailed update on when the overdue maturity payment could be expected. It enclosed a letter from GPG which said that it was likely that maturity payments would be delayed by up to 12 months.
18. On 16 October 2019, Hartley wrote to Mr R to confirm that, following its acquisition of the BBSAL business, his SIPP was being wound up and would be replaced by a new SIPP established for the purpose by Hartley. It said that if Mr R did not wish to transfer his SIPP to Hartley, he could transfer to another registered pension arrangement of his choice.
19. On 17 December 2019, Mr R emailed Hartley to express concern that his complaint about the incorrect valuation had not been answered before BBSAL had gone into administration. He requested the current value of the assets held in the SIPP and clarification over the ownership of the Akbuk Harmony Bay and Walsall Burial Plots assets. He also questioned whether Hartley 'skimmed' funds from the interest paid on the SIPP bank account and its plans for charging additional fees relating to GRCT.
20. Hartley responded on 30 December 2019. It said the current value of the SIPP investments was difficult to determine. The current cash balance was £1,134.05 and the Dolphin investment was valued at £17,872.25. However, the current value of the Akbuk Harmony Bay and Walsall Burial Park investments was unknown. If a valuation was required for benefit calculation purposes, then, in the absence of a formal valuation, Hartley would normally value the two investments at a notional £1.
21. It added that the legal title of the investments was still held with Berkeley Burke Trustee Company Limited and that the formal re-registering of assets into the name of Hartley Pensions Limited had not yet been completed. It said that it was not aware of any facility whereby it could take a share of the interest on the SIPP bank account. Finally, it said that whether it would charge the GRCT fee was under review as part of a wider project looking at fees in general.
22. Hartley sought an update on the situation with Walsall Burial Park on 17 April 2020. It followed this up on 30 April 2020 and again on 14 May 2020. It received a response later that day which said:

"ALL plots are for sale at all times, in number order FIFO basis, as per the contracts issued and signed for. All plots are already by default for sale..."

We are not reselling or selling any further investor plots at this time, and the site is being completed and plots will be sold in number order.”

23. On 14 May 2020, Hartley also emailed Akbuk Resort Group asking for a response to previous emails requesting information about Akbuk Harmony Bay. It received a response the next day which said:

“You will know the hotel is shut like all business at present and may not even open again...”

24. On 11 May 2020, Mr R complained to Hartley that, nine months later, it had still not provided him with a valuation for the SIPP assets. He repeated his complaint regarding the treatment of interest on the SIPP bank account and made further complaints regarding: the failure to provide an annual statement; the failure to collect the investment from the matured loan note with Dolphin; the failure to collect rental income from Akbuk Harmony Bay; and the failure to process the contracted five year buy back of the Akbuk Harmony Bay investment. He asked that Hartley hold off taking fees until these issues had been resolved.
25. On 26 June 2020, Hartley said that an Establishment Deed and Transfer Deed had been executed for the SIPP, thereby replacing the Berkeley Burke scheme. Re-registration of the assets held within the SIPP would be carried out in due course, but it was unable to provide a timescale for completion. However, it said there were no issues in respect of current ownership.
26. Hartley provided the following valuations of the investments as at 30 September 2020:-
- |                       |                                |
|-----------------------|--------------------------------|
| • Akbuk Harmony Bay   | £79,500 (purchase value)       |
| • Walsall Burial Park | £50,400 (purchase value)       |
| • Dolphin Loan Notes  | £1,100 (10% of purchase value) |
| • Cash                | £457.92                        |
27. It said the Green Oil Plantations investment had been fully wound up and had no value. The £21,000 Dolphin Loan Notes investment had matured and £40,069.71 was returned to Mr R's SIPP bank account on 6 March 2019. The £11,000 Dolphin Loan Note investment return was overdue and, owing to issues with this investment at the time, Hartley was using a value of 10% of the purchase price to ensure this investment was not overvalued. However, it was not a true valuation of the asset as this could not be obtained at that time. It added that FSCS considered this investment to have no value.
28. Hartley said that the Akbuk Harmony Bay and Walsall Burial Park were both illiquid investments and had a notional value of their purchase price. However, because a value would not be readily available were Mr R wishing to crystallise his funds, they would also be regarded as having no value.

29. Hartley has now provided an asset summary dated June 2021. This shows the GPG and Walsall Burial Park investments as having no value. It shows that, as at 22 June 2021, the SIPP held the Akbuk Harmony Bay property valued at £79,500 and cash of £457.92.
30. Mr R had transferred £32,000 and £40,275 from the SIPP on 28 February 2017 and 11 June 2019 respectively.
31. Hartley confirmed that there were no changes to the T&Cs for former BBSAL clients and that charges would continue to be as per the existing fee schedule. Mr R says a revised T&Cs and Schedule of Fees have not been provided.

## Adjudicator's Opinion

32. Mr R's complaint was considered by one of our Adjudicators who concluded that no further action was required by Hartley. The Adjudicator's findings are summarised below:-
  - The acquisition of BBSAL by Hartley was done without prior liability. As a result, any complaints and claims Mr R has against BBSAL regarding matters prior to 18 September 2019, must be directed to the administrators of Berkeley Burke (**the administrators**). The Financial Services Compensation Scheme (**FSCS**) is also accepting claims against BBSAL.
  - The new T&Cs were available on Hartley's website, together with the Hartley (Berkeley Burke Bespoke SIPP) KFD (**the Hartley KFD**). To all intents and purposes that are material to Mr R's complaint, they were unchanged from the originals issued by BBSAL.
  - An information sheet, also available on the Hartley website, set out some of the details of the sale of BBSAL to Hartley under the heading of FAQs. These included:-
    - As part of the terms of the sale the existing BBSAL office in Leicester remained open with the staff dealing with the day-to-day administration being employed by Hartley.
    - Assets held within the SIPP would be re-registered to a new arrangement titled the Berkeley Burke Pension Scheme.
    - There was nothing for [Mr R] to do if he was happy to switch his SIPP to Hartley.
    - While a SIPP held [illiquid] assets Hartley would continue to administer the pension and comply with HMRC and Financial Conduct Authority (**FCA**) requirements. The administration tasks...must be carried out regardless of the SIPP asset or underlying value...The administration fee is based on the

minimum administration requirements...The administration fee is not charged on a 'per activity' basis.

- The SIPP charges would remain the same as the current fee schedule.
- Mr R was aged 50 when he established the SIPP with BBSAL. Although his retirement plans were not clear, it is likely that he anticipated it would be at least another 10 to 15 years before he took retirement. However, poor health in the interim has meant that he has been looking to take his pension since 2017.
- Hartley could not be held accountable for the underlying investments held in the SIPP as it was not involved in their selection and its acquisition of the BBSAL business was done without prior liability. Suffice to say the SIPP was largely invested in a series of high risk, illiquid, unregulated assets that were unsuitable for a pension plan investment.
- It was clear that many of Mr R's investments had now failed or were experiencing difficulty for a variety of reasons, including the recent global pandemic.
- There may be some responsibility attaching to BBSAL and to any FCA regulated adviser Mr R employed in the establishment of his SIPP and the selection of his underlying investments. However, any claims in relation to that should be pursued with FSCS and through the courts. The Adjudicator was aware that Mr R was following this course of action.
- It is against this background that Hartley had clearly been having some difficulty in obtaining accurate valuations of the two remaining assets that appeared to have some value, namely Akbuk Harmony Bay and Walsall Burial Park.
- The T&Cs made clear that Hartley relied on the asset managers to provide up to date valuations and it could not reasonably be held responsible if, for any reason, these were not available.
- In the Adjudicator's view it was not unreasonable for Hartley to apply either the last known value or the cost value of the investments, where a current value was not known, for the purposes of providing an ongoing illustration of the position of the SIPP funds. Alternatively, if it had reason to believe the investment had failed it may apply a notional value or possibly a NIL valuation.
- However, until those assets became redeemable Hartley would be failing in its duty to comply with HMRC requirements if it allowed Mr R to crystallise his funds and take benefits based on an uncertain value. To do so would potentially constitute an unauthorised payment and leave both it and Mr R open to significant tax penalties.
- The evidence showed that Hartley remained in contact with the managers of the Akbuk Harmony Bay and Walsall Burial Park investments and in the Adjudicator's view, it was doing all that could be reasonably expected of it to obtain realistic

valuations. But both investments appeared beset by problems that suggested it may be some time before any accurate value was available and before the investments could be redeemed.

- Mr R had complained that Hartley has delayed collecting the investment maturity value from GPG. The evidence showed that GPG was in difficulty for some time, and certainly before Hartley acquired BBSAL, eventually filing for bankruptcy in July 2020. In the Adjudicator's view, Hartley could not be held accountable for the failure of an investment it had no part in selecting and over which it had no control.
- Mr R had also complained about the delay in re-registering the Akbuk Harmony Bay asset in the name of the Berkeley Burke Pension Scheme. The Adjudicator believed it was clear that Hartley was taking steps to re-register the assets and Mr R had presented no evidence to show that he had suffered a financial injustice as a result of any delay.
- Finally, Mr R had complained about Hartley's fees. Mr R was paying an annual administration fee and was also liable for certain other charges depending on activity. These charges were payable in accordance with the tariff that Mr R had agreed, pursuant to the agreement that he originally signed up to in 2012. These were flat fees: the amounts were not calculated by reference to the fund size or investment performance.
- Furthermore, the T&Cs made clear that the fees were still chargeable even if the investments were illiquid. In the Adjudicator's view, there were no grounds for relieving Mr R of the contractual obligation to pay Hartley's fees arising while the SIPP remained in existence.

33. Mr R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr R provided a number of detailed comments which I have summarised below. These do not change the outcome. He says:-

- Berkeley Burke issued revised T&Cs in October 2016 (**the 2016 T&Cs**) which superseded the 2012 version. The clauses referred to by the Adjudicator were not present in the revised version and so he has based his Opinion on incorrect information.
- Mr R notes that the 2016 T&Cs stated:-

15.1 Uncrystallised funds can be used to pay a pension ...where an ill health condition is met.

16.1 Once a year [Berkeley Burke] will supply you with a valuation of your fund.

16.3 You agree to review any valuations provided.

24.2 [Berkeley Burke] may amend any of the provisions of these terms and conditions by giving you at least one month's written notice.

- Hartley had not provided him with an annual statement in either 2020 or 2021, thereby breaking Clause 16.1.
- As he had not received an annual statement how could he verify the value as per Clause 16.3?
- He is concerned how a 5-star hotel (Akbuluk Harmony Bay) could have no value. He believes that the legal ownership of the hotel complex has changed hands and Hartley, as his SIPP provider, has been negligent in not correctly transferring ownership documentation resulting in him being financially significantly worse off.
- Hartley has not complied with HMRC regulations on valuations which state that valuations should reflect the price an asset is likely to fetch on the open market.
- He has seen no evidence that Hartley was trying to contact the Asset Managers.
- If his investments have failed, Hartley could use the nominal value to calculate the fund value and subsequent charges to the appropriate contracted rate.
- The schedule of fees shows that there is a maximum charge of £500+ VAT for a SIPP with a value greater than £50,000 and a minimum of £150 plus VAT where the value is less than £15,000.
- Hartley has not complied with its fee structure to charge £150 for funds valued at less than £15,000.
- Hartley has agreed to close his account only if he pays it £360 so he can then take a lump sum of £24 for his life savings.
- He was charged for many activities not mentioned in the Schedule of Fees, which he has complained about since 2012.
- In April 2018, Berkeley Burke decided to change his SIPP Bank Account from Bank of Scotland to Cater Allen.
- Berkeley Burke neglected to update Investment Managers with the new bank account details. Dolphin Capital was sending maturity funds but as the bank account no longer existed, the transaction bounced.
- It was only because he chased Dolphin Capital Management that he managed to establish the negligence of Berkeley Burke.
- Once Dolphin had the correct bank details, it transferred funds for the first German Property renovation loan note to his SIPP.
- However if Dolphin had been given the correct bank details for his SIPP Dolphin could have paid him the maturity value of the second loan note.
- He lost £17,000 because of administrative errors by Berkeley Burke and yet the Adjudicator has ignored this, preferring instead to speculate that GPG went into liquidation so that he wouldn't have been paid out.



- Hartley did not comply with its October 2016 T&Cs regarding disability (Clause 15.1). Hartley could have implemented Clause 15.1 which allows uncrystallised funds to be paid out where an ill health condition is met
- The Adjudicator had not fully considered Section 27 of the Financial Services and Markets Act 2000 (**the FSMA**)
- SIPP providers have a duty of care to ensure that assets are suitable to be held within a SIPP. Hartley Pensions is a SIPP, and it chose to purchase toxic assets that were unsuitable for a pension. Hartley was aware of what it was buying and, as it is regulated by the FCA, is aware of its obligations under the FCA's Conduct of Business Sourcebook (**COBS**) 2.1.1
- The FSCS has determined that Berkeley Burke failed in its due diligence requirements in relation to the Green Oil Plantations, Harmony Bay and Walsall Burial Park investments and it did not adequately explain the risks associated with these investments.
- Hartley Pensions has no incentive to resolve his position in that it has consciously purchased toxic illiquid assets and put them into a SIPP to collect fees from SIPP clients and develop a database of clients who need legal representation with an FSCS claim.
- The Adjudicator has made incorrect assumptions about his investments which when taken out at age 50 should have matured at 2 years, 5 years and 8 years. He has financial documents stating his target retirement age to be 57.

## **Ombudsman's decision**

34. I should start by making two things clear:-

- I am not a regulator as Mr R appears to believe. My core jurisdiction is broadly to consider complaints made by actual or potential beneficiaries that they have sustained injustice as a consequence of maladministration by the trustees, managers or administrators of occupational and personal pension schemes and also disputes of law between actual or potential beneficiaries and the trustees or managers of occupational or personal pension schemes.
- As the Adjudicator pointed out, many of the matters which are the subject of this complaint, and which Mr R continues to raise, relate to the acts or omissions of Berkeley Burke and arose before Hartley took over the management of the SIPP on 19 September 2019. I can only consider the complaint in so far as it relates to matters for which Hartley are responsible once they took over the management of the SIPP on 19 September 2019.

35. Mr R does not appear to have objected to the transfer to Hartley in September 2019, although he made various other complaints. It is therefore reasonable to conclude that he became a member of the SIPP and that the governing terms and conditions

during the period of the complaint are those headed Hartley Terms and Conditions Berkeley Burke Pension Scheme (**the SIPP T&Cs**) issued in October 2019.

36. Section 27 of the FSMA relates to any agreements made through unauthorised persons in the establishment of the SIPP and the selection of the underlying investments. As explained, Hartley can have no liability in relation to any alleged failure to exercise due skill and care in relation to the making of those investments or indeed of any maladministration or breach of law before 19 September 2019.
37. This includes any liability in relation to any complaint about charges of interest deducted by Berkeley Burke prior to 19 September 2019 or alleged failures to carry out valuations before that date or failure to take adequate steps to transfer the assets. Mr R's complaints in respect of any of these matters should, as the Adjudicator stated in his Opinion, be referred to the FSCS and/or the administrators.
38. My understanding is that Mr R did submit a proof of debt to the administrators and submitted a claim to the FSCS which has resulted in him receiving the maximum pay-out of £85000 in relation to his claim. In practice therefore making an additional claim to FSCS will not achieve anything.
39. Similarly, I do not consider Hartley to have any liability regarding the application of Clause 15.1 of the October 2016 T&Cs concerning disability. Not only does this pre-date Hartley's involvement, as Mr R first suffered ill-health in 2017, it is also a new complaint which has not previously been put to Hartley.
40. Mr R has said that the Adjudicator's assumptions about his retirement plans were incorrect and that he intended to retire at age 57, in 2019. While I acknowledge this, in practice it makes no material difference to the outcome of his complaint as his 57<sup>th</sup> birthday was some six months before Hartley took over the management of his SIPP. Furthermore, by this time most of his investments had already failed.
41. Hartley's liability in relation to events occurring on or after 19 September 2019 is determined by reference to the contractual terms it has entered into in its capacity as administrator of the Scheme and COBS applicable to Hartley as an operator of a SIPP.
42. Mr R has raised a number of detailed points, but these can be summarised into six key areas:-
  - Hartley has not charged the correct annual administration charge.
  - Hartley has charged other fees outside the terms of the Fee Agreement.
  - Hartley has retained interest due to the SIPP bank account.
  - Hartley has failed to provide annual valuations.
  - Hartley caused a delay in collecting the maturity value from the investment in Dolphin.

- Hartley has delayed the reregistration of Akbuk Harmony Bay and Walsall Burial Park.

I have dealt with each of these in turn.

*Hartley has not charged the correct annual administration charge.*

43. Mr R has said that Hartley has not complied with its fee structure to charge £150 for funds valued at less than £15,000.
44. The fee schedule formed part of the 2012 T&Cs that Mr R agreed to at the outset of the SIPP. The reason the Adjudicator referred to the 2012 T&Cs in his Opinion was to make clear that this is what Mr R signed up to. While I acknowledge that the wording was amended to an extent in 2016, my view is that the essential meaning, and certainly the fee basis, remained unchanged.
45. The original fee schedule to which Mr R agreed shows that where the fund is valued at more than £50,000 the fee was £500 + VAT payable in advance. The schedule also provided for fees to be increased annually by percentage, not materially exceeding the percentage increase in National Average Earnings (**NAE**) over the previous year. While I have not seen a breakdown of how the fees have been increased by Berkeley Burke year on year, the NAE index between April 2012 and April 2021 has increased by 34.3% so the increase in fees appears reasonable.
46. I acknowledge that, at the time the final annual fee was levied in May 2020, the position with the Akbuk Harmony Bay investment was far from clear. I am satisfied that Hartley was still trying to ascertain the value of the investment as can be seen from emails it exchanged with the Akbuk Resort Group.
47. The email from Akbuk Resort Group dated 15 May 2020, implies that at that time the closure of the hotel was related to the pandemic, and therefore possibly temporary, but that there were perhaps underlying problems that meant it would not reopen. On this basis, there is an argument that the value of Akbuk Harmony Bay at that time was NIL. What is certain is that FSCS, in their calculations in May 2021, valued Akbuk Harmony Bay at NIL.
48. Hartley provided an asset summary dated 30 September 2020. This showed the value of Akbuk Harmony Bay and of Walsall Burial Park as being the book price of £79,500 and £50,400 respectively.
49. Hartley provided a further asset summary dated June 2021. This showed the GPG and Walsall Burial Park investments as having no value at that time. It also showed that, as at 22 June 2021, the SIPP held the Akbuk Harmony Bay property valued at £79,500 and cash of £457.92. This clearly contradicts the view of FSCS one month earlier.
50. However, regardless of the valuation given to Akbuk Harmony Bay, I do not consider the Walsall Burial Park investment was valued at NIL in May 2020. The email from Spring Hill Cemetery, dated 14 May 2020, clearly implies this as a going concern.

51. Furthermore, FSCS gave Walsall Burial Park a book value of £50,400 at 24 May 2021 and it was not until 23 August 2021 that it declared that it had no value. On this basis alone, it can be reasonably argued the SIPP had a notional value of more than £50,000 in May 2020.
52. Section 16.1 of the SIPP T&Cs states:-
- “For the purposes of this [yearly] valuation, where investments are able to be valued, the value will be the value at the close of business on the day prior to the valuation. Where investments or assets have no published price or value, the valuation will be based on the original cost or the most recent valuation.”
53. This does appear to be contradicted by the Hartley KFD which states:-
- “In the event that valuations are not provided, the value of the investment will be noted as NIL until an accurate valuation is made available.”
54. However, Clause 1.4 of the SIPP T&Cs states:-
- “If there is a conflict between these Terms and any other document that forms part of the Agreement, these Terms will prevail.”
55. I am therefore persuaded that Hartley acted correctly in applying the book value to at least Walsall Burial Park, if not to Akbuk Harmony Bay. So, with a fund value of more than £50,000 until at least June 2021 it is reasonable that Hartley charged the maximum scale fee of £565 + VAT as at May 2020.
56. There is no evidence to show that Hartley took an annual fee at May 2021 as Mr R's current cash balance remains at a little above the value of £1,134.05 as at 30 December 2019 less the May 2020 fee.
57. I consider that Hartley has charged annual administration charge in accordance with the SIPP T&Cs and I do not uphold this part of Mr R's complaint.

*Hartley has charged other fees outside the terms of the Fee Agreement*

58. Mr R says that he was charged for many activities not mentioned in the Schedule of Fees, which he has complained about since 2012. However, I am not considering the position before Hartley took over in September 2019 and Mr R has not provided any evidence to show that since then Hartley has charged any additional fees causing him a loss.
59. The only fee which appears to have been charged since Hartley took over is the £678 annual administration charge considered in paragraphs 40 to 55 above. All the other fees pre-date the appointment of Hartley.
60. More recently, following FSCS' declaration that Walsall Burial Park had no value, Hartley emailed Mr R, on or about 26 August 2021, to say that as all his investments were now valued at NIL, he could take the balance in his bank account of £457.92. However, it intended to charge £300 + VAT to do so (a lower fee than usual as a

gesture of goodwill) and the remaining funds would be paid as a 25% TFCS and 75% taxable pension payment.

61. The stated intention to charge a fee of £300 + VAT to close a SIPP which is valued at £457.92 may appear to be harsh, but again is covered by the Fee Schedule which Mr R agreed to in 2012. This shows that the charge for taking benefits from the SIPP is £250 to crystallise and £150 to receive income. These figures will now be higher due to indexation.

62. Moreover, Section 9 of the SIPP T&Cs states:

“9.1 The administration charges are detailed in the Key Features Document relevant to your Berkeley Burke Pension Scheme. By signing the application form you are agreeing to both the initial and ongoing charges as applicable and as amended from time to time.

9.3 All fees shall be taken from any cash holdings held within your SIPP bank account. Should there be insufficient cash holdings, then the relevant sum shall be disinvested from your holdings in any investment platform where possible.

9.4 Our fees will be due for as long as you hold a Berkeley Burke Pension Scheme product, even if the investments held are illiquid.”

63. So, there is no basis for upholding this part of Mr R’s complaint as any charges are in accordance with the Fee Schedule to which he agreed when joining the SIPP.

*Hartley has retained interest due to the SIPP bank account.*

64. If Hartley has a contractual right to retain part of any interest held in a client bank account and has disclosed the basis on which it does so, Hartley is entitled to retain that money.

65. Berkeley Burke did have a right to retain some interest as set out in the 2012 T&Cs, but the rate of interest and the percentage retained does seem to have varied over time.

66. However, looking at the 2016 T&Cs this provision was removed. Clause 9.2 of the 2016 T&Cs states:

“Where a cash account held within your SIPP qualifies for interest it will be paid gross.”

67. Furthermore, the bank account was switched to Cater Allen in 2018. In its email to Mr R dated 30 December 2019, Hartley confirmed that, as far as it was aware, Cater Allen provided no facility for it to retain any of the interest.

68. So, I am satisfied that the retention of interest ceased once the 2016 T&Cs became effective and was certainly not Hartley’s practice. Further, the switch took place before the SIPP was transferred to Hartley. I therefore do not uphold this part of Mr R’s complaint.

*Hartley has failed to provide annual valuations.*

69. There is an obligation on Hartley to produce annual valuations and so it should have provided valuations in 2020 and 2021.

70. However, Section 3.4 of the SIPP T&Cs, states:

“Being able to accurately value your Berkeley Burke Pension Scheme is dependent on receiving the correct information from the third party providers where your Berkeley Burke Pension Scheme is invested. We will not be held responsible for any delays in being able to provide you with valuations due to information not being received in a timely and accurate manner from a third party.”

71. As noted by the Adjudicator, given the difficulties Hartley had in obtaining accurate and current valuations, I do not find there has been maladministration on its part in this regard.

72. Therefore, I do not uphold this part of Mr R’s complaint.

*Hartley caused a delay in collecting the maturity value from the investment in Dolphin.*

73. On 8 July 2019, Dolphin, by then the German Property Group (**GPG**), wrote to say that maturity payments would be delayed by up to 12 months.

74. On 30 July 2020, GPG was declared bankrupt and this was confirmed to Mr R on the same date.

75. Section 18 of the SIPP T&Cs, states:

“18.1 We will exercise reasonable care and skill in the administration of your Berkeley Burke Pension Scheme, but we will only be responsible for loss or damage that is a direct result of our fraud, wilful default or negligence.”

76. GPG was in financial difficulty before Hartley took over the management of Mr R’s SIPP. It had already announced that maturity payments would be delayed.

77. Had Hartley continued to pursue GPG between September 2019, when it took over the management of the SIPP, and 30 July 2020, when GPG was declared bankrupt, there is nothing to indicate that GPG would have been able to make the overdue maturity payment.

78. Consequently, I do not consider that Mr R’s loss was caused by any maladministration by Hartley and there is no evidence of fraud, wilful default or negligence on its part,

79. I therefore do not uphold this part of Mr R’s complaint.

*Hartley has delayed the reregistration of Akbuk Harmony Bay and Walsall Burial Park.*

80. Mr R says he believes that Hartley has been negligent in not correctly transferring the ownership of Akbuk Harmony Bay and Walsall Burial Park, and that he is financially worse off as a result.
81. I agree that Hartley as trustees should have taken reasonable efforts to reregister the interest in Akbuk Harmony Bay and Walsall Burial Park to the extent that was practicable.
82. But I note that these investments formed part of Mr R's successful claim for compensation from FSCS.
83. The FSCS Decision Letter included the following wording:

“What happens to my rights to claim for my loss?

When you signed the application form for compensation, you agreed that once we pay you compensation, you'll transfer your rights against the Firm, and anyone else who caused your loss, to FSCS. This means that you'll give us the right to try and get back the compensation we've paid you from anyone we can. You won't be able to claim again (or receive and keep any payments) for the same loss yourself, even if our rules don't allow us to pay all of your loss. The full legal terms you agreed to are on your original application form. If you'd like to remind yourself of these but no longer have them, please contact us and we will send you our copy.

If we make a claim against anyone who caused your loss, we'll claim for your total loss (as set out in the table under 'How we calculated your payment'). We will use this figure even if we haven't been able to pay that much of it because of our compensation limits. Our rules say that if we're successful, we might be able to pay you some more money.

Also, your right to claim anything more (or receive and keep any payments) from the Firm or from anyone else involved in your loss will be transferred to FSCS.”

84. Even though FSCS did not declare Walsall Burial Park as having no value initially, and no further compensation was payable to Mr R when it did so in August 2021 as he had already received the maximum sum of £85,000, it does now form part of the rights he has transferred to FSCS.
85. So, given the wording in Paragraph 83 above, I conclude that the interest in these investments now lays with FSCS and that it is therefore up to FSCS to pursue the matter. As FSCS states, if it is successful in obtaining an amount greater than the compensation paid to Mr R, it can pay him more money.
86. Further, FSCS' calculation shows that rental income from Akbuk Harmony Bay ceased in 2016. Given this and the uncertainty over its value, it would be difficult to argue that the investment had any value in terms of rental income or capital that Mr R

could have recouped between September 2019, when Hartley took over the SIPP, and May 2021 when FSCS compensated him for his loss.

87. And with regard to Walsall Burial Park, even if I were to agree that there was an unreasonable delay in the reregistration, in my view it is clear, from the email dated 14 May 2020, that it is unlikely that Mr R would have been able to successfully liquidate that investment at that time or in the months that followed.

88. Furthermore, if valuations had been pursued this potentially would have reduced the value of Mr R's fund still further. Clause 7.6 of the SIPP T&Cs states:

"Fees incurred for obtaining the valuation can be paid or reimbursed from cash funds in the pension scheme upon receipt of an appropriate invoice and providing that sufficient funds are available."

So it my conclusion that Mr R would have had either to meet these costs himself, or been reimbursed from his already depleted fund.

89. For the reasons set out above I do not find that any delay on Hartley's part in reregistering the Akbuk Harmony Bay and Walsall Burial Park investments has caused Mr R a loss. I therefore do not uphold this part of his complaint.

90. I sympathise with the position that Mr R now finds himself in. Although he has received some compensation from FSCS he has clearly lost a sizeable proportion of his pension fund investments. However, I do not agree that he has incurred that loss as a result of Hartley's actions.

91. I do not uphold Mr R's complaint.

**Anthony Arter**

Pensions Ombudsman  
18 November 2021