# Ombudsman's Determination

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| Applicant | Mr T |
| Scheme | Suffolk Life MasterSIPP (**the SIPP**) |
| Respondent | Curtis Banks Pensions (**Curtis Banks**) |

## Outcome

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

## Complaint summary

2. Mr T has complained that because he did not receive a letter from Curtis Banks informing him of an increase to his fees, he was not given the opportunity to transfer the SIPP to the more cost effective Your Future SIPP (**YFS**), or another pension arrangement. This resulted in him paying higher fees than necessary for one year.

3. He has also said that the new fee structure was overly complicated and confusing, and as he did not need financial advice from Curtis Banks, he did not believe the new non-advised client fee was fair.

4. Mr T wants to be reimbursed £384 for the higher fee he paid in 2019/2020, and for Curtis Banks to improve how it sends correspondence to its clients in the future.

## Background information, including submissions from the parties

5. Mr T was a member of the European Pensions Management Scheme (**the Scheme**), which was administered by European Pensions Management Limited (**EPML**).

6. In 2016, EPML entered special administration. On 9 November 2016, Suffolk Life sent a letter to Mr T (**the First Letter)** at his current address (**the First Address**) saying that Suffolk Life had taken over the Scheme and would start winding it up on 5 December 2016. The First Letter invited Mr T to transfer the Scheme to the SIPP, or to another pension arrangement free of charge. It contained a transfer pack, which included the following documents for the SIPP: key features, personal illustration, schedule of fees, schedule of allowable investments and terms and conditions (**the Terms and Conditions**).

7. As the SIPP's standard fee was higher than the Scheme's fee, Mr T was offered a "permanent" discount of £345 + VAT per annum, which resulted in him paying a fee of £200 + VAT per annum for the SIPP. According to Suffolk Life's records, Mr T did not have a financial adviser. As the Scheme was winding up, Suffolk Life said that if it did not hear from him by 5 December 2016, he would automatically be transferred to the SIPP.

8. On 29 July 2017, Mr T signed the Suffolk Life transfer application (**the Transfer Application**) to transfer the Scheme to the SIPP (**the Transfer**).

9. Section seven of the Transfer Application titled "Investor's declaration" stated:

> "Before signing the declaration, you should carefully read the following for your own benefit and protection: this declaration, key features, your personal illustration, schedule of fees, schedule of allowable investments and terms and conditions."

10. The Terms and Conditions dated October 2016 stated the following:

> "19.3 We may make other increases or changes to our fees by amending these terms under paragraph 26.2.
>
> …
>
> 26.2 We may amend these terms by written notice to you for any of the following reasons:
>
> …. legitimate cost increases or reductions associated with providing the scheme and your SIPP.
>
> 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."

11. In 2017, Suffolk Life became part of Curtis Banks.

12. On 11 January 2018, Suffolk Life sent a letter to Mr T (**the Second Letter**) at the First Address, saying that the Transfer had been completed. The value of Mr T's account in the SIPP at that time was £8,684.63.

13. On 4 January 2019, Mr T telephoned Curtis Banks to ask how his employer could make a contribution to the SIPP, and to inform it of his new address (**the Second Address**).

14. On 27 August 2019, Curtis Banks sent a letter to Mr T (**the Third Letter**) at the Second Address, informing him of changes to the SIPP's fees. The main points were as follows:-

   - As it did not know what assets Mr T had been invested in when he first transferred to the SIPP, and the SIPP had offered Curtis Banks' wide investment options, it had determined that this product was most likely to be able to accept his assets.

- It was now making a number of improvements and changes to the SIPP, so the discount Mr T was receiving would no longer be available. Fees would be higher due to the increase in costs of administering the SIPP, and it was introducing better online accessibility and broadening the acceptance of some assets.

- Mr T's current fee was £215 + VAT per annum, but from the next anniversary of his plan, it would increase to £560 + VAT per annum, and he would need to pay an additional £100 + VAT per annum for not employing the services of a financial adviser. Fees for other services were also changing.

- Mr T could consider switching to another product offered by Curtis Banks, YFS, which had a lower fee, or transfer to another 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.

- The SIPP's new fees would apply from 1 October 2019.

15. While Curtis Banks has provided The Pensions Ombudsman (**TPO**) with a copy of the Third Letter addressed to Mr T at the Second Address, Mr T alleges that he did not receive it.

16. On 29 January 2020, Mr T moved to a new address (**the Third Address**). On 24 February 2020, he informed Curtis Banks by telephone about his change of address.

17. On 26 February 2020, Mr T telephoned Curtis Banks to complain about the higher annual fee, including the introduction of the non-advised client fee, which had been charged to his account without being given notice.

18. On the same date, Curtis Banks replied with the following points:-

- It enclosed a copy of the Third Letter and other documents relating to the SIPP and YFS.

- The Terms and Conditions which Mr T had agreed had stated that fees could be increased after providing notice.

- Clients without financial advisers needed more support, so they would be provided with a newsletter.

- If Mr T transferred to YFS the fee would be £260 + VAT, plus £100 + VAT per annum if he used Curtis Banks' investment partners, plus an additional £320 + VAT per annum if he wanted to use the full range of investment options.

- He could transfer to another pension provider for £250.

19. On the same date, Mr T told Curtis Banks that he did not believe he had received the Third Letter, so he had only ever agreed to the original fees. If he had received it, he would have switched to YFS. He also considered the non-advised client fee to be unfair. He wanted a partial refund of his 2019/2020 fee.

20. On 28 February 2020, Curtis Banks tried to telephone Mr T to ask him if he had any further queries.

21. On 2 March 2020, Mr T emailed Curtis Banks. He said that as it was not accepting his position, he would take his complaint to the Financial Ombudsman Service (**FOS**). He confirmed that there was another 11 months before the next fee was due, so he had time to consider his options. On the same date, Curtis Banks replied saying that it would not uphold his complaint.

22. On 8 November 2020, Mr T confirmed to TPO that he had transferred the SIPP to YFS and that his fee from January 2021, including the non-advised client fee, was £360 + VAT per annum.

**Mr T's position**

23. He does not believe he received the Third Letter, so was not given the opportunity to transfer to YFS or another provider. This meant that he had paid higher fees than was necessary.

24. He does not understand why a letter of such importance was sent by standard post with no tracking or signature required. He believes that he should have been required to sign and return an acknowledgement to confirm receipt of the letter.

25. The most cost-effective option, YFS, should have been the default for clients who did not respond to the letter.

26. He believes that the new fee structure is overcomplicated and confusing and the blanket approach for non-advised clients is unfair to him.

27. If he had been made aware of YFS, he would have transferred and saved £384 in fees.

**Curtis Banks' position**

28. It does not agree that it should refund Mr T's fees, as it provided him with more than 30 days' notice in the Third Letter, which it sent to him at the address it had on its file.

29. It also does not agree that it treated Mr T unfairly. It has regulatory responsibilities and is required to complete annual processes. The revised fee structure ensures that clients only pay for services they use.

30. While the Third Letter offered to waive the transfer fee, Mr T had not replied within the stated period, and so the offer no longer applied.

## Adjudicator's Opinion

31. Mr T'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:-

- Curtis Banks provided a copy of the Third Letter, which set out the new fee structure. Curtis Banks says that it was sent to Mr T at the Second Address on 27 August 2019. Mr T has confirmed that he did not move to the Third Address until 29 January 2020, so Curtis Banks sent it to the correct address. Mr T said that he did not believe he had received it.

- While it could not be proven that the Third Letter was sent and received by Mr T, the possibility that he may have overlooked it through human error could not be excluded. So, on the balance of probabilities, it was more likely than not that the Third Letter was sent and received. As such, Mr T failed to take action to transfer the SIPP to YFS in order to reduce fees.

- Mr T submitted that important information such as the Third Letter should not be sent by standard post without being tracked or requiring a signature. While this may be the case, Curtis Banks was responsible for taking this decision, and its method for sending letters to customers cannot be determined by TPO.

- Mr T said that YFS should have been the default option for clients who did not respond to the Third Letter. The Adjudicator did not agree with this. There were two versions of YFS, and as the lower cost version that Mr T subsequently chose had a more limited range of investment options, it might not have been suitable for all customers. It would also have involved a transfer between two different pension arrangements with different terms and fees, and thus would have required a customer to sign and agree new terms and conditions.

- Mr T believes that the new fee structure is overly complicated and confusing, and as he did not need financial advice from Curtis Banks, he did not believe the new non-advised client fee was fair. But it was not within TPO's remit to determine the structure or level of fees a pension provider charges its customers. If Mr T did not believe the fees were fair, he had the option to transfer to another pension arrangement if he wished.

32. Mr T did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr T's relevant comments are as follows:-

- He was not making any assumptions about whether the Third Letter was sent, but he did not receive it. So, he was not warned about the changes to the SIPP's fees.

- Standard post was inappropriate for communicating important changes. Curtis Banks could have sent the Third Letter using tracked or signed for postal options and used other communication methods, such as email, text, or telephone.

- It was unacceptable for him to have to bear the cost of not receiving the notification and to spend the amount of time he had on dealing with his complaint.

33. I have considered Mr T’s comments, but they do not change the outcome, and I agree with the Adjudicator’s Opinion.

## Ombudsman’s decision

34. I empathise with Mr T’s additional comments. While Curtis Banks has provided a copy of the Third Letter, this does not prove that it was sent or received, and Mr T says that he did not receive it. However, as there is a possibility that Mr T did receive the Third Letter but overlooked it, I cannot find that Curtis Banks’ actions in this regard amount to maladministration.

35. I accept that Curtis Banks could have made greater effort in informing its clients about the changes. However, although the Terms and Conditions state that fee changes will be communicated to members in writing, they do not specify the postal method. Also, The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (**the Regulations**), do not specify that information posted to members requires a signature on delivery or must be tracked. While the Regulations state that in certain circumstances information can be sent to members electronically, it is not a requirement for schemes to do so. It is also not a requirement for information to be communicated by any other means, such as text or telephone. So, Curtis Banks did not act contrary to the Terms and Conditions or the Regulations.

36. I cannot determine that the non-advised client fee is unfair, as setting fees is a business decision for Curtis Banks to make. If Mr T believes it is unfair, he has the option to transfer to an alternative provider.

37. I do not uphold Mr T’s complaint.

**Anthony Arter CBE**

Deputy Pensions Ombudsman
23 November 2023