

## Ombudsman's Determination

Applicant	Mr and Mrs E
Scheme	Hornbuckle Mitchell SIPP ( <b>the Scheme</b> )
Respondent	Hornbuckle Mitchell Group Limited ( <b>Hornbuckle</b> )

## Outcome

1. I do not uphold Mr and Mrs E's complaint and no further action is required by Hornbuckle.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mr and Mrs E have complained about: -
  - Hornbuckle's failure to communicate the new fees that applied to their Scheme and fees taken from the Scheme bank account without authorisation.
  - Failure to provide a breakdown of fees applied to the Scheme.
  - Delay in requesting a quotation from Bluefin, Hornbuckle's block insurance broker.
  - Hornbuckle's failure to monitor the loan account adequately and the fees they have been charged.
  - The Property Sale Fee of £700.00 plus VAT that was applied in respect of the sale of the property of which they were unaware.

## Background information, including submissions from the parties

4. Mr and Mrs E have also complained about a number of other matters which Hornbuckle has accepted were its fault: -
  - Fees mistakenly applied to their Scheme. Hornbuckle have refunded these fees and there is no financial loss.
  - Hornbuckle's failure to respond to their letter of 15 April 2015. Hornbuckle accept that it did not respond to their letter.

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- £500, plus VAT, fee with regard to solicitor's costs. As Mr and Mrs E used their own solicitor, Hornbuckle have refunded the fee, including VAT.
  - Hornbuckle's failure to act in a timely manner in relation to the transfer of the Alpha Multi Property share certificate from Crest to Selftrade, and to keep them informed of progress. Hornbuckle accepted that it did not complete the share certificate in a timely manner.
  - Delays with counter-signing the completion document regarding the sale of the Cumnock Property. Hornbuckle accept that it took longer than necessary to counter sign the sale document.
  - Failure to issue annual Scheme valuations. Hornbuckle has accepted that it failed to send annual renewal packs on the anniversary of the Scheme for the years: 2007, 2008, 2013 and 2014.
5. On 21 October 2015, Hornbuckle issued its final response and addressed each complaint individually. Summarised below are Hornbuckle's comments in relation to the complaints it has not accepted.

### Failure to communicate the application of new Scheme fees which were taken from the Scheme account without authorisation

6. With regard to its failure to communicate with Mr and Mrs E concerning the fees that applied to their Scheme, and failing to seek their authorisation prior to deducting the fees, Hornbuckle said that it wrote to them on 16 December 2013, advising of the amendments to its fee structure which would come into effect from 1 February 2014. It said that, under its Terms and Conditions, it was entitled to deduct fees automatically and did not need Mr and Mrs E's prior permission.

### Failure to provide a breakdown of fees that have been applied to the Scheme

7. Hornbuckle explained that it provided generic fee information and was unable to tailor its fee narratives for every scheme it administers. Hornbuckle said that it felt it provided sufficient information in order for members to know what the charges related to.

### Delay in requesting a quotation from Bluefin, its block insurance broker

8. With regard to the delay caused by Hornbuckle requesting a quotation from Bluefin, it referred to its letter, dated 27 February 2015, whereby Hornbuckle addressed Mr and Mrs E's complaint relating to the delays they encountered in obtaining an insurance quote from Bluefin. Hornbuckle stated that it felt it acted in a timely manner when responding to their instructions and, therefore, was unable to uphold their complaint.

### Its failure to monitor the loan account adequately and the fees they have been charged

9. Hornbuckle addressed Mr and Mrs E's complaint about the failure to monitor the loan account adequately and the fees that they have been charged. Hornbuckle confirmed

that it was a party to the loan agreement with RBS and, as a result, would have been able to obtain loan balances and undertake reviews when required. It further said, that following Mr and Mrs E's instructions on 17 February 2015, to settle the balance of the loan held with RBS, Hornbuckle countersigned and issued the instructions to the bank the following day. However, as a gesture of goodwill Hornbuckle refunded 50% of the loan monitoring fee but did not agree that the charge should be refunded in full.

They should not have to pay the Property Sale Fee of £700.00 plus VAT that was applied in respect of the sale of the property of which they were unaware

10. Hornbuckle said with regard to the Property Sale fee of £700 plus VAT, Mr and Mrs E would have been aware of this fee when they completed the Property and Land Sale Application Form.
11. Hornbuckle has in total waived £2,671.55 in fees and charges, albeit some of these should not have been charged in the first instance. Hornbuckle has made an offer of compensation of £100 for the distress and inconvenience caused, however Mr and Mrs E have not accepted the offer.

### **Adjudicator's Opinion**

12. Mr and Mrs E'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 briefly below: -
  - Hornbuckle had provided this Office with Mr and Mrs E's SIPP application forms that Mr and Mrs E signed, agreeing to be bound by Hornbuckle's Terms and Conditions. The Adjudicator said it was reasonable to expect Mr and Mrs E to have received the letter sent of 16 December 2013, advising of the amendments to its fee structure; Hornbuckle had the correct address on file. As Hornbuckle was entitled to deduct fees, the Adjudicator was unable to uphold this element of their complaint.
  - Mr and Mrs E were not complaining about the fees as such but about the service they had received from Hornbuckle. Hornbuckle recognised this and refunded fees totalling to £2,671.55, therefore, the Adjudicator did not believe that further fees should be refunded. Hornbuckle accepted that it failed to send annual renewal packs on the anniversary of their Scheme in 2007, 2008, 2013 and 2014.
  - The Adjudicator was not persuaded that the delays caused by Hornbuckle in obtaining a quote from Bluefin were significant. Mr and Mrs E had not said that they were prevented from completing any investment transaction because of the time taken by Hornbuckle in relation to Bluefin.

- Mr and Mrs E said that Hornbuckle failed to monitor their loan account adequately. It has refunded 50% of its fees in relation to the loan. The Adjudicator considered this to be satisfactory, even though Hornbuckle was a party to the loan agreement and should have promptly signed the forms required in the management of the loan account. The Adjudicator appreciated Mr and Mrs E's dissatisfaction with the failure to sign certain forms quickly, but this was not entirely Hornbuckle's fault as it was dependent on following RBS processes and therefore Hornbuckle needed to be satisfied that the forms were correct.
  - Hornbuckle received instructions from Mr and Mrs E to settle the balance of the RBS loan on 17 February 2015, but it did not cancel the standing order mandate until 27 April 2015, so Mr and Mr E made further payments which were not necessary. On 28 May 2015, one month later, Hornbuckle repaid the further payments. Mr and Mr E have not suffered any financial loss as a result, but they would have experienced some frustration in having monies unnecessarily deducted.
  - Mr and Mrs E, by signing the Property and Land Sale Application Form, had agreed to the charges applied in connection with the transaction. The property fee was also detailed in Hornbuckle's fee schedule which Mr and Mrs E received in December 2013, therefore, Hornbuckle was entitled to apply this fee.
  - Hornbuckle has said that the offer of £100 for distress and inconvenience for Mr and Mrs E was fair in the circumstances. The Adjudicator appreciated that Mr and Mrs E had suffered some distress and inconvenience, however, she was not of the opinion that they suffered significant inconvenience. Many of Mr and Mrs E's complaints were resolved by Hornbuckle and fees were refunded. Given the amount already offered or paid, the Adjudicator did not consider that the remaining matters were sufficient to warrant an additional award.
13. Mr and Mrs E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr and Mrs E provided their further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr and Mrs E for completeness.

### **Ombudsman's decision**

14. Mr and Mrs E contend that the fees Hornbuckle has waived were not due in the first place and that, had it acted timeously, the fees would not have been applied and that it was Hornbuckle's poor customer service that caused such fees to occur.
15. Hornbuckle has agreed that fees were taken in error on a number of occasions so there is no dispute that a problem has occurred. However, as the fees were refunded

back to the SIPP account, Mr and Mrs E were put back into the position they should have been and, as such, no loss has been incurred.

16. With regard to the change in fees, I note that on 16 December 2013, Hornbuckle notified Mr and Mrs E of the changes to its fee structure and the Scheme's Terms and Conditions taking effect from 1 February 2014. It directed Mr and Mrs E to Hornbuckle's website for the 2014 fee schedules. The website would have asked them to contact their advisor for support or any questions. As such, I find it is reasonable to expect Mr and Mrs E to have been aware of the fees chargeable to the Scheme from February 2014. I find that Hornbuckle fulfilled its obligation by notifying Mr and Mrs E one month in advance about the changes to both its terms and conditions and its fee structures.
17. Regulation 28.1 of the Terms and Conditions states that Hornbuckle can change its terms and conditions, including the fee schedule and permitted investments schedule. Regulation 28.2 states that Hornbuckle can change the terms and conditions including the fee schedule and permitted investments schedule for any other valid reason. It will not charge for transferring out a member's individual funds if a change under this section 28.2 has an unfavourable effect on his rights under the Scheme, and if it receives the member's written request to transfer within 30 days of notice of the change. Therefore, Mr and Mrs E always had the option to transfer to a new provider at no cost provided they gave 30 days' notice. There is no evidence that shows that Mr and Ms E ever contacted Hornbuckle following receipt of this letter.
18. Further, under the Terms and Conditions of the SIPP, Hornbuckle can amend the fees it charges. There is no requirement for Hornbuckle to consult with Mr and Mrs E before doing so. Nor does it require their agreement to such changes. It is sufficient for Hornbuckle to provide advance notice of changes which I can see that it did on each occasion. I find that, based on the evidence that has been presented, Hornbuckle acted correctly in accordance with the Scheme rules.
19. I find that the £100 award offered by Hornbuckle is sufficient in this instance. I do not consider that Mr and Mrs E have suffered significant distress and inconvenience such that it merits an award in addition to the monies already refunded or offered to Mr and Mrs E. I therefore leave it with Mr and Mrs E to contact Hornbuckle if they decide, on reflection, that they wish to accept its £100 offer.
20. I do not uphold Mr and Mrs E's complaint.

**Anthony Arter**

Pensions Ombudsman  
20 June 2018