

Ombudsman's Determination

Applicant	Mr S
Scheme	Hornbuckle Mitchell SIPP (the SIPP)
Respondent	Hornbuckle Mitchell Group Ltd (Hornbuckle)

Outcome

1. I do not uphold Mr 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 S says Hornbuckle applied new fees - administration of a building fee, self-managed risk premium, and non-block insurer risk premium, based on a fee schedule that he has not previously seen (or agreed to). The policy terms he agreed to do not say Hornbuckle reserves the right to introduce new fees or increase fees above that stated in the original fee schedule.
4. Mr S says Hornbuckle told him that the assets held in his Policy are classed as a 'single non-standard investment' - which carries a £375 annual administration fee, but he was charged £600. Mr S says Hornbuckle has not given him a proper explanation for this.

Background information, including submissions from the parties

5. Mr S took out the Policy in November 2004. The declaration in his signed application (the **Application**) states:

"In return for the services to be provided, I have received a copy of and agree to pay the charges set out in the schedule of fees current at the date of this application together with ...[my professional adviser's fees] .."
6. Note 4 of the fee schedule in force at the time the Policy was established (the **2004/2005 Fee Schedule**) says:

“.. [Hornbuckle] reserves the right to increase the level of charges and fees above the level of any stated increase rate provided that a written statement to this effect has been sent to the client one month prior to the increase”.

7. The fees shown in the 2004/2005 Fee Schedule include an annual fee of £390 and an annual property administration fee of £100 per letting. The schedule states that annual fees increase each year in line with the index of national average earnings.
8. Mr S says he believed the 2004/2005 Fee Schedule would apply for the duration of his Policy. Mr S says the fees have increased considerably above the rate stated in the schedule - mostly due to the introduction of new fees.
9. Hornbuckle says it issued the first set of terms and conditions (**T&C**) to clients in 2011 (**the 2011 T&C**), with a letter informing them of the changes.
10. The template letter Hornbuckle says was used to notify the changes states:

‘We are consolidating the T&C of the policy into one document and a full copy of the revised T&C is enclosed. You must inform us before 20 January 2012, if you do not accept any of the changes’ (the **December 2011 Letter**).
11. The 2011 T&C says the Application confirms Mr S’ agreement to the T&C, the fees set out in the fee schedule and the rules. That the T&C, together with the Application and the fee schedule, form the basis of a legally binding agreement between him and Hornbuckle. And, if there is any conflict between the T&C and the other documents, the T&C will prevail. The T&C says Hornbuckle has the right to vary the fee schedule (in line with section 18.1 of the T&C), and the T&C (in line with section 29).
12. Section 18.1 says Hornbuckle may review and amend its fee schedule as described in section 29. Section 29 says Hornbuckle reserves the right to amend (or supplement) the T&C on giving 30 days’ notice. If the policyholder is unhappy with the proposed changes or supplementary T&C, he is free to transfer within that period and Hornbuckle will not increase the transfer out fees and charges. Section 29.2 lists the ‘valid reasons’ under which Hornbuckle will alter the T&C; these generally relate to changes in its ownership (or services) or events outside its control.
13. Hornbuckle says the mailing of the December 2011 Letter was outsourced to an external company. Consequently, it is unable to provide a copy of the letter specifically addressed to Mr S.
14. Hornbuckle has provided copies of letters it says were issued to Mr S in November 2010, June 2011 and July 2011 (the **2010/2011 Letters**). The letters show Mr S’ correct address.
15. Hornbuckle says, as it does not hold other addresses for Mr S, the address shown in 2010/2011 Letters would have been used for the mailing in December 2011.
16. Hornbuckle says a number of its clients did not agree the changes so it is satisfied that policyholders received the December 2011 Letter.

17. Hornbuckle has provided the T&C it says were introduced in 2012 (the **2012 T&C**). Section 28 says Hornbuckle can change the T&C (including the fee schedule and permitted investment schedule) on giving notice. Section 28.1 lists the reasons Hornbuckle can make changes. Section 28.2 says Hornbuckle can change the aforementioned documents if it has “any other valid reasons for doing so”. And, where a change under section 28.2 has any unfavourable effect on an individual’s rights under the scheme, and a written request to transfer is made within 30 days of notice of the change, Hornbuckle will not charge for transferring out the individual’s funds. Section 28.2 says unless Hornbuckle decides otherwise, changes to T&C will be published on its website only.
18. Hornbuckle says the T&C have always been available online. Each year Hornbuckle issue an ‘annual renewal valuation pack,’ which refers the client to Hornbuckle’s website for details of the current T&C and fee structures.
19. On 13 November 2012, Hornbuckle wrote to Mr S enclosing annual statements for his Policy. The accompanying letter stated for up to date T&C, current fee schedule and key features please refer to Hornbuckle’s website”.
20. Hornbuckle’s fee note, dated 25 November 2013, shows a ‘Full SIPP’ annual renewal fee of £490 charged in connection with the continued administration of Mr S’ Policy.
21. Hornbuckle says it wrote to clients in December 2013, informing them of fundamental changes to the T&C, current fees and the introduction of new fees. Hornbuckle says it fulfilled its obligation by providing sufficient notice of the changes.
22. Hornbuckle has provided a copy of a letter addressed to Mr S - dated 16 December 2013, notifying changes to Hornbuckle pricing with effect from 1 February 2014 that may affect his Policy. The changes include significant pricing changes across Hornbuckle’s commercial property related activities. The letter says ‘Mr S will want to apply any potential changes to his own pension to understand if they affect him’. The letter directs him to Hornbuckle’s website for a detailed fee schedule, a copy of Hornbuckle’s ‘permitted investment’ list, and a definition of ‘standard’ and ‘non-standard’ investments (the **December 2013 Letter**).
23. Hornbuckle has provided a copy of an email from the external mailing company which it says sent the communication in December 2013. The email confirms that the letter was posted on 16 December 2013. Hornbuckle says the December 2013 Letter should have provided sufficient notice to Mr S to review the fee schedule and also the T&C, to establish the impact of those changes, if any. Hornbuckle says the onus is on the client (and their adviser) to obtain clarification on the fees that apply to their policy.
24. Around September 2014, Mr S complained to Hornbuckle about the fees charged to his Policy.
25. Hornbuckle says it has two fee schedules: one for policies which can hold one or more ‘standard or non-standard’ investments (a ‘full SIPP’); and a separate fee

schedule where only one investment is permitted ('Single SIPP'). Hornbuckle says Mr S' annual renewal packs confirmed the types of investments held in his Policy.

26. Mr S' 2012 annual renewal pack shows the following asset types: cash, property, loan account, and a current account. His 2013 and 2015 renewal packs also indicate that he holds more than one 'asset'.
27. Hornbuckle's 2014 'Full SIPP' fee schedule shows an annual administration fee of £600 for plans which hold one or more 'non-standard investments', and £525 for plans where only one 'non-standard investment' is held. The schedule says to refer to Hornbuckle's website for a copy of its permitted investments list and a definition of 'standard' and 'non-standard' investments.
28. Hornbuckle's fee note dated 30 November 2014, shows an annual administration fee of £600 for 'one or more non-standard investments'. The invoice shows an administration of a building fee of £400, annual administration/monitoring fee of £200, self-managed risk premium of £200, and non-block insurer risk premium of £150 (the **November 2014 Fee Note**). The charges appear consistent with those detailed in Hornbuckle's 2014 'Full SIPP' fee schedule.
29. Mr S has provided an excerpt from Hornbuckle's 2014 'single investment' SIPP fee schedule. It shows an annual administration fee of £375 where a plan holds a 'non-standard investment'.
30. Hornbuckle's 'permitted investment schedule' dated October 2014, states that 'single investment SIPPs' are not permitted to invest directly in commercial property.
31. Further comments from Mr S are set out below:
 - An article in 'City Wire' reported that an Ombudsman [at the Financial Ombudsman Service], upheld a complaint about Hornbuckle introducing new fees. His complaint is essentially about the same thing.
 - He has very limited options to transfer to an alternative SIPP provider - and the costs would be prohibitive. Had he been given a copy of the 2008 [2013] fee schedule, he might have taken a different view - or considered moving his pension to a different SIPP provider.
 - He would like Hornbuckle to honour the 2004/2005 Fee Schedule.
32. Further comments from Hornbuckle are set out below.
 - Mr S did not raise any grievances about the T&C's - nor did he exercise his option to transfer out within the notice period.
 - Hornbuckle did not advise Mr S at any time that his Policy should be classed as a 'single non-standard investment' SIPP. Any Hornbuckle SIPP which holds a 'non-

standard non-traditional investment' [such as commercial property] has always been classed as a 'Full SIPP'. Consequently, a higher administration fee applies.

Adjudicator's Opinion

33. Mr 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:
- Under the T&C that apply to Mr S' Policy, Hornbuckle is entitled to amend its T&C, including the fee schedule and permitted investment schedule, in the circumstances described in sections 28.1, and for 'any other valid reasons' under section 28.2.
 - While the fees have increased above that stated in the 2004/2005 Fee Schedule, and new fees introduced, the evidence supports that the fees have been charged in accordance with the applicable Hornbuckle fee schedule.
34. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr S has provided further comments but these do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr S for completeness.

Ombudsman's decision

35. Mr S says he did receive the December 2013 Letter but it was lacking in transparency and was misleading - the letter failed to highlight the material changes to the charging structure.
36. Mr S says the letter gave him no cause for concern, or reason to take action. The letter referred to 'moderate' fee increases, and only that the changes 'may' affect his pension. But the letter did not highlight the extent of that impact. It was not until he received an invoice that he had cause to query the charges.
37. Mr S says the letter did not mention the option to transfer without penalty, nor section 28.1 and 28.2 of the T&C. He questions why Hornbuckle did not include a copy of the T&C.
38. Mr S says the Financial Ombudsman Service (**FOS**) upheld a complaint made by another policyholder about Hornbuckle, and directed that Hornbuckle reimburse the complainant the amount of the fee increase, and offer a transfer free of charge. Mr S says his complaint to office is virtually the same.
39. Mr S says Hornbuckle has provided contradictory evidence to this office. The only investment he holds in his SIPP is a single commercial property. Hornbuckle confirmed that this was the case in an email to this office in February 2016.

40. The fact that Hornbuckle gave notice of the changes outlined in the December 2013 Letter, and that Mr S received the communication, is not in dispute.
41. In writing to Mr S in December 2013, I am satisfied that Hornbuckle fulfilled its obligation to him to provide sufficient notice of the changes coming into effect.
42. Mr S says the letter was lacking in transparency and misleading. I do not think this is right. The letter announced changes to Hornbuckle's T&C, its current fees, and advised the introduction of new fees, and was sufficiently clear as to its purpose. It was Mr S' responsibility to contact Hornbuckle if he was in any way unclear as to how the impending changes would affect him personally.
43. The December 2013 Letter directed him to Hornbuckle's website for a detailed fee schedule, a copy of Hornbuckle's 'permitted investment' list and a definition of 'standard' and 'non-standard' investments. Had he made enquires at the time, he would likely have been aware of the particular impact of the changes on him.
44. Hornbuckle signposts clients to its website for details of the current T&C and fee structures. I note that Hornbuckle's letter to Mr S in November 2012, referred him to its website for the updated T&C, and a current fee schedule. The December 2013 letter adopted the same approach.
45. The opportunity to transfer out (without charge) was open to Mr S. Had he considered the T&C, he would likely have been aware that he had that option.
46. While I fully accept that Hornbuckle did advise this office that Mr S' sole investment in his SIPP is commercial property, I do not consider that this materially changes the outcome. Hornbuckle's literature is sufficiently clear that 'single investment SIPPs' are not permitted to invest directly in commercial property'. It would therefore follow that the fees that apply to his Policy are those applicable to a 'Full SIPP'.
47. In conclusion, I am satisfied that the changes Hornbuckle made to its fees were in line with the applicable terms and conditions. Hornbuckle fulfilled its obligation to Mr S by providing him with sufficient notice in advance of those changes coming into effect and providing him with the right to transfer without penalty.
48. Therefore, I do not uphold Mr S' complaint.

Karen Johnston

Deputy Pensions Ombudsman
1 June 2017