

## Ombudsman's Determination

Applicant	Mr L and Mr N ( <b>the Applicants</b> )
Scheme	Hornbuckle SIPP ( <b>the SIPP</b> )
Respondent	Hornbuckle

## Outcome

1. The Applicants' complaint against Hornbuckle is partly upheld, but there is a part of the complaint I do not agree with. To put matters right (for the part that is upheld) Hornbuckle should pay any penalties imposed by HMRC on the SIPP. Hornbuckle should also award £500 to each of the Applicants to recognise the significant distress and inconvenience caused by its maladministration.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Due to an oversight by Hornbuckle, details on a property held within the SIPP were omitted from VAT return submissions for a period of four years, between 2011 and 2015. The mistake has resulted in a total tax charge on the SIPP of £15,520, which the Applicants have said Hornbuckle is liable to pay. The Applicants have also said they have concerns about Hornbuckle's compliance with Client Asset Sourcebook (**CASS**) regulations.

## Background information, including submissions from the parties

4. Hornbuckle has said that it closed its London office in 2011, but that it failed to update its address for the bank account into which rent from the SIPP property was received. Because of this, bank statements for the property continued to be issued to the unoccupied London office, and so were not received by Hornbuckle. As a result, the property information was not included in the SIPP VAT returns from 2011 to 2015. This omission has led to the SIPP's underpayment of tax by £15,520.
5. In response to the Applicants' complaint, Hornbuckle offered to pay any penalties imposed by HMRC for the late payment of the tax. Hornbuckle has estimated that this could be up to £4,656 as a penalty, and £859.19 further interest for the delayed

payment. Hornbuckle also offered to pay £250 to each of the Applicants to recognise the distress and inconvenience cause by its maladministration.

6. The Applicants did not accept this offer and asked this Office to look into their complaint. They said that Hornbuckle's negligent administration had caused the 'catastrophic non-compliance with VAT regulations' and, as a result Hornbuckle is liable for the tax charge. The Applicants also claim that Hornbuckle has not properly adhered to CASS regulations.

## **Adjudicator's Opinion**

7. The Applicants' complaint was considered by one of our Adjudicators who concluded that the offer to pay any HMRC penalties was reasonable, as it was Hornbuckle's maladministration that would cause any penalties, so it would not be appropriate for the Applicants to have to pay these. However, the Adjudicator confirmed her opinion that the SIPP, and not Hornbuckle, was responsible for paying the VAT charge, as it would have always been payable by the SIPP.
8. The Adjudicator considered each of the Applicants has suffered significant distress and inconvenience at learning of the tax bill, and having not had the opportunity to pay the amount gradually over the four year period. The Adjudicator recommended that Hornbuckle pay £500 to each of the Applicants to recognise the significant distress and inconvenience, which Hornbuckle agreed to.
9. The Applicants did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. The Applicants provided their further comments, several of which did not form part of their original complaint. This Determination will address the original complaint, that being the VAT liability and Hornbuckle's administration and handling of 'client money'. The new comments will be passed to Hornbuckle for its response. The Applicants have the right to raise a new complaint if they are not satisfied with Hornbuckle's response.
10. The Applicants' further comments on the original complaint are summarised below. These do not change the outcome and I agree with the Adjudicator's Opinion. I will only respond to the further comments relating directly to the original complaint for completeness:-
  - The financial offer and resolution is unrealistic. The time spent dealing with the complaint has cost the Applicants' firm thousands of pounds in man hours. The Applicants have been forced by Hornbuckle's errors to employ a third party, whose fees should be refunded by Hornbuckle.
  - The Applicants expect to be in the same financial position as when the SIPP was originally opened in 2006. Paying the VAT liability each quarter is different to the historical charge. The only resolution that would put the Applicants back in the same financial position would be for Hornbuckle to pay the VAT liability.

## PO-11755

- The Applicants were given nil balance VAT returns produced by Hornbuckle and they trusted Hornbuckle's professionalism and interpretation of VAT rules.
- The VAT liability is 'shrouded in a veil of secrecy'.
- The Applicants have concerns about the compliance with regulatory requirements especially dealings with HMRC and CASS regulations.

### Ombudsman's decision

11. The crux of the Applicants' complaint is that the SIPP owes a substantial VAT bill. I agree that a one-off VAT bill for a four year period is very different to being able to pay the VAT liability quarterly. However, the VAT would have always been owed by the SIPP, so it must now be paid by the SIPP.
12. The Applicants have concerns about Hornbuckle's maladministration. It is not in dispute that Hornbuckle's maladministration has caused the VAT issue. Hornbuckle's offer to pay any penalties incurred by HMRC is appropriate given its errors. This proposed settlement places the Applicants back into the correct position they should be in.
13. I agree with the Adjudicator that the distress and inconvenience caused by having to pay the larger, one-off VAT bill is significant and I concur with the award of £500 to each of the Applicants to recognise this.
14. The Applicants have suggested that Hornbuckle is not being transparent about the VAT details. If it has not already done so, Hornbuckle should share all the VAT documentation with the Applicants, including how the VAT has been calculated and any supporting evidence.
15. The Applicants have said that they have incurred man hours and third party fees in trying to resolve the issues. I will not recommend that Hornbuckle pays the Applicant's third party fees as it was the Applicants' decision to employ this third party. The award of £500 to each of the Applicants recognises the non-financial injustice caused by Hornbuckle's actions, including the time taken by the Applicants in dealing with their complaint.
16. The Applicants have said that they do not think Hornbuckle has complied with CASS regulations. CASS regulations refer to the holding of client money, however Hornbuckle does not hold client money. Hornbuckle has said that the SIPP funds are held in two SIPP scheme accounts, one with NatWest and one with Bank of Scotland, both of which are jointly owned by the Applicants as the members, and by the trustees of the SIPP, Hornbuckle Mitchell Trustees Ltd. The CASS regulations do not apply in this case.
17. I partly uphold the Applicants' complaints.

**Directions**

18. (i) Hornbuckle will use its best endeavours to ascertain the actual figure for the penalties imposed by HMRC relating to the late payment of VAT on the SIPP property. Hornbuckle will complete the necessary HMRC forms promptly and, once the VAT figures are obtained from HMRC, Hornbuckle will pay any penalties forthwith.

Within 21 days of the date of this Determination:

(ii) Hornbuckle will share the VAT documentation and supporting evidence, if it has not already done so, with the Applicants; and

(iii) Hornbuckle will pay £500 to each of the Applicants in recognition of the significant distress and inconvenience caused by its maladministration.

**Anthony Arter**

Pensions Ombudsman  
8 August 2017