

Ombudsman's Determination

Applicant	Mr S
Scheme	Hornbuckle SIPP (the SIPP)
Respondent	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' complaint is about the misinformation he says Hornbuckle provided to him on how to sell shares from his Self-Invested Personal Pension (**SIPP**). As a result, there were delays in selling shares which Mr S claims led to a financial loss.

Background information, including submissions from the parties

4. This case has a long and complex background with a protracted exchange of correspondence between Mr S, Hornbuckle and the stockbroker firm, since late 2014. In light of this, only the key events relevant to the complaint are documented in Appendix 1.
5. Mr S referred the matter to this Service for consideration in March 2016. To summarise the key issues Mr S raised:-
 - Despite his instructions to Hornbuckle to sell the shares, and his warnings that share prices were falling, due to delays, contradictory information, and its 'chaotic' systems, Hornbuckle caused the sale of the shares in his SIPP to be delayed, causing him a financial loss. Mr S is also concerned that Hornbuckle do not have a complete file, with some records having been deleted or misplaced, and he felt that his complaint had not been answered.
 - He is unhappy that Hornbuckle did not advise him earlier than 20 October 2014 that a stockbroker account would be needed in order to sell the shares. Hornbuckle admitted to him that the process to sell shares had evolved, which in Mr S' view, meant there

PO-12302

were no 'hard or fast rules and there was no plan or organisation', which he described as 'chaos'.

- He felt Hornbuckle had ignored his request to progress the sale in a timely manner when Hornbuckle had not done anything with the application form for two weeks, before it was returned to Mr S for completion. Mr S was very upset by the lack of urgency on the part of Hornbuckle.
- Mr S made reference to the closing price of the shares on the following dates:
- 21 October 2014 - £1.625
- 11 November 2014 - £0.755
- 17 November 2014 - £0.54
- He concluded he would not sell the shares on 17 November 2014 because his efforts to do so had been thwarted by Hornbuckle's neglect. Mr S confirmed to Hornbuckle he would attempt to mitigate his losses with the hope of an improvement in the share price.
- Hornbuckle had not asked him what his instructions were in respect of the excess cash balance in his SIPP, valued at around £200,000, nor offered advice on how to transfer it.
- Hornbuckle has not confirmed details of its service standards to Mr S, and has referred him to its terms and conditions, which Mr S says do not contain information about the maximum time allowed to complete an action.
- Mr S explained that, in relation to the shares, because there was no approval from the Court, and no fixed hearing date, and with numerous claims being made against the company, the August market price for the shares was probably at the right level taking account of the risks. As a result, Mr S decided to sell half of the shares held. He sold 60,000 shares for £61,912.50. Mr S contends had Hornbuckle allowed him to sell the shares without a third party's involvement, or if Hornbuckle had actioned his instructions in September or October 2014, he considered he could have sold the shares at, or close to, the September peaks in price at around £1.75. If Hornbuckle insisted on the setting-up of the stockbroker account and acted with reasonable speed, he could have sold the shares at, or near to, the peaks of £1.625 on 21 October 2014.
- Mr S calculated his losses: in the former case, his loss was 60,000 shares x £1.75, less the £61,912.50, which resulted in a total loss of £43,087.50; in the latter scenario, the loss was calculated as 60,000 shares x £1.625, less £61,912.50, amounting to a total loss of £35,587.50; and if Mr S forgave the failings and delays up to 20 October 2014, (which he did not accept), he felt Hornbuckle could have had the stockbroker account set up within a week when the share price was £1.45, 60,000 shares x £1.45, less £61,912.50, amounting to a total loss of £25,087.50.

PO-12302

- Mr S' complaint is in both negligence and breach of contract, from which he considers he has suffered losses. He says he would have reinvested, just as he did when he sold the shares. Mr S identified the investments he invested in, and considered he had lost the chance of 50% gains, which he discounts to 20%.
 - Mr S also commented on the anguish and anxiety caused by the matter as a whole, and the considerable time he has spent dealing with the matter. He says it took him two days to review the file; identify the relevant documents; and draft the complaint letter. His charging rate is £225 per hour, so this amounts to £4,500 of his time, though it does not include time spent drafting his correspondence and time engaged in calls, Mr S also considers Hornbuckle ought to forfeit a year's fees, around £360, because Hornbuckle was in breach of its contract and was negligent.
6. Hornbuckle set out its position on the complaint, in its formal response of 29 April 2016, and said:-
- Hornbuckle received an incomplete application form to open a stockbroker account. It requires the application form to be fully completed and signed by the member as an instruction for it to countersign.
 - Mr S was included in the email from the stockbroker firm when the application form for the account was sent on 17 October 2014.
 - Whilst Mr S feels the time period begins in September 2014, because Hornbuckle did not receive a written instruction but simply knew of his intention, it was unable to process any request from Mr S until it had received the completed application form.
 - Hornbuckle is a SIPP administrator, and it requires written instructions from the member or the adviser to make an investment or move money transactions.
 - It did what it could to facilitate the setting-up of the account, but there were delays at the stockbroker firm; it provided direct contact details and ensured all documentation was dealt with in a timely manner.
 - Mr S asked for the shares not to be sold on 18 November 2014, and Hornbuckle cannot be held responsible for fluctuating share prices.
 - Mr S was acting on an execution only basis, therefore Hornbuckle would act on his instruction once received in writing.
 - At the time of these events taking place, Hornbuckle acknowledged the delays were unnecessary and there was an admission that things had not been handled in good time, however, Hornbuckle was not aware that the stockbroker firm had included Mr S in its email of 17 October 2014, when it asked for the application form to be completed.
 - The email of 16 October 2016 from Hornbuckle to Mr S clearly said that relevant sections, as member, should be completed and signed prior to the form being returned to Hornbuckle.

PO-12302

- Delays were encountered at the stockbroker firm because the compliance manager had to review the documents before opening the account; the stock broker firm has its own procedures to follow, as does Hornbuckle.
- It could have been more proactive in chasing the forms from Mr S, but the delays and loss Mr S claims were not caused by Hornbuckle.
- The onus was on Mr S to personally deal with his pension issues because he did not have a financial advisor, and as a joint trustee, it is in his own interests to deal with pension matters and for this reason Hornbuckle did not accept Mr S's claim for his time costs to be reimbursed.
- Hornbuckle researched the share prices, a link to which was provided, showing numerous occasions where the share price peaked above that at which Mr S eventually sold the shares.
- During the Adjudicators investigation into the dispute, further information was sought from Hornbuckle and the following observations made:-
- When did the process to sell shares change? When did Hornbuckle begin to insist on a scheme member have a stockbroking account in order to sell shares? What actions did Hornbuckle take to inform members of the changes?
- On the evidence available, it appeared that Hornbuckle had failed to advise Mr S of the changes to the process at any time prior to Hornbuckle's email of 16 October 2014.
- Because the share certificate could not be located, this would have caused delay.
- Mr S chased Hornbuckle for an update on 16 October 2014, following his earlier call in September 2014, by which time a month had elapsed when Hornbuckle had not located the share certificate. Hornbuckle had not progressed the sale of shares, nor had it informed Mr S of the changes to the selling process. It was not until later that day that Hornbuckle emailed Mr S confirming the process to sell shares.
- Why did it take Hornbuckle two weeks, between 17 October 2014 and 31 October 2014, to ask Mr S to complete the application form? What are the service standards in dealing with such requests?

7. Hornbuckle explained:-

- There were no documents located which confirmed Mr S had contacted Hornbuckle to ask about the general process of selling shares. Hornbuckle provided a telephone call note, dated 20 September 2013, confirming Mr S enquired about how to purchase shares and the process required; an email chain from February 2014, detailing communications exchanged concerning fees and fixed protection; and another telephone call note, dated 28 April 2014, in which Mr S enquired about purchasing shares. Hornbuckle did not accept that the time period began in September because

PO-12302

the evidence suggests his enquiries were to do with the purchase of shares, and not the sale of them.

- Hornbuckle's process for selling shares has always been to use a stockbroker, because this is an industry wide requirement and is not self-imposed. The process change referred to is in relation to the purchase of listed shares and not the sale of them.
 - The email of 23 October 2014 from Hornbuckle concerns the purchase of shares, and therefore, the information contained in that email is correct. Hornbuckle only acts on instruction and it strongly recommends that clients seek financial advice.
 - There was no evidence to suggest Mr S made contact with Hornbuckle in September 2014 to give instructions to sell. The earliest indication Hornbuckle knew of Mr S' intention to sell shares, is the call from Mr S on 16 October 2014. This was then followed by a subsequent email confirming the process, and that the application form and relevant member sections would need to be completed by Mr S before being returned to Hornbuckle for counter signature.
 - It did not consider it would have advised Mr S that the share certificate could not be located. Hornbuckle forwarded a document showing the share certificate had been sent to the custodian bank on 7 August 2014, in accordance with FCA regulations, and the custodian bank had a process in place with regard to returning the share certificate to Hornbuckle. Hornbuckle was aware of its location and the certificate was with Hornbuckle before or on 20 October 2014.
 - Whilst Hornbuckle felt that the stockbroker firm caused a delay in processing the application form, it was not felt that a five day turnaround time was a 'delay', it was a reasonable amount of time and indicated good industry practice.
 - Why did Mr S leave it a month before chasing for an update from Hornbuckle if he was eager to sell shares while the price was favourable?
 - The application form was sent to both Hornbuckle and Mr S. In Hornbuckle's email of 16 October 2014, Mr S was advised to complete the sections relevant to him, as a member, before returning it to Hornbuckle.
8. The Adjudicator considered Hornbuckle's responses and requested:
- copies of any telephone call recordings which took place in September and October 2014, in particular the telephone call of 16 October 2014;
 - an explanation on why Hornbuckle told Mr S the application form would be passed to a supervisor for allocation on 20 October 2014;
 - documents explaining the process for selling shares which would have been available to Mr S since the policy's inception; and
 - the date at which the process for purchasing shares changed.

PO-12302

9. Hornbuckle responded saying:-

- It did not hold telephone call recordings made in September or October 2014 as the external systems Hornbuckle uses, holds call recordings for a maximum of 6 months. The standard procedure is to complete records of telephone calls to allow Hornbuckle to maintain an audit trail. The note of the call of 16 October 2014 was provided, and Hornbuckle highlighted the statement “he wants to be able to send the share certificate to his broker to be able to sell the shares when the price is right”. In Hornbuckle’s view, it was reasonable to expect that Mr S was aware that he needed a broker to sell the shares.
- In respect of the contents of the email dated 20 October 2014, there is a standard process for the investment teams whereby all post and application forms are allocated to a specific team member dependent upon the nature of investment, whether this is standard or non-standard. Once the work is allocated, that individual will review the documents and either, get them countersigned, or issue documents to the clients for completion.
- Hornbuckle emailed Mr S on 31 October 2014 because it had not heard from him. The pension scheme is self-invested and therefore the onus falls on the client to return the required documentation.
- No pension provider would allow or facilitate the sale of shares without a stockbroker.
- Hornbuckle forwarded a copy of the application form used when Mr S purchased shares off market, and provided a copy of the share pack which outlines where share certificates are held. Also, it included an email from Mr S’ adviser, dating back to 2012, confirming that the administrators of Mr S’ pension scheme, which was prior to Hornbuckle’s appointment, required that any deal would need to go through a share trading platform and clearing house. The adviser would then go to the stockbroker to buy shares. In light of this, Hornbuckle maintained its position that Mr S was fully aware of the requirements and regulations concerning the purchasing and selling of shares.

Adjudicator’s Opinion

10. After reviewing the available documentation, the Adjudicator concluded that no further action was required by Hornbuckle. Her findings are summarised briefly below:-

- The documents provided by Hornbuckle show Mr S was making other enquiries with Hornbuckle, but not about the sale of his shares. It could not be said Hornbuckle gave Mr S incorrect or out of date information about the sale of shares process because there was no documentary evidence to support that he had made enquiries of that nature.
- Other than the note for the telephone call of 16 October 2014, neither party was able to produce evidence that a conversation took place prior to October 2014. In her view, the timeline began in October 2014, and not in September 2014, as Mr S has alleged.

PO-12302

- In light of the call note of 16 October 2014, where it has been recorded “he wants to be able to send the share certificate to his broker to be able to sell the shares when the prices is right”, it was reasonable to assume Mr S knew of the requirements in order to sell shares.
- The four days taken to locate and retrieve the share certificate from the custodian bank, was a reasonable turnaround time.
- There was no duty on Hornbuckle to complete the application form on Mr S’ behalf.

11. Mr S did not accept the Adjudicator’s Opinion and submitted:-

- A five year share price chart, highlighting the fluctuations in the price of the shares; peaking in April 2014 and dropping in value throughout the remainder of 2014.
- He had decided to sell his shares before they had dropped further, and said that Hornbuckle had delayed the sale in various ways.
- There was an agreement that Hornbuckle would sell shares when he wanted to sell, but Hornbuckle was negligent and breached the agreement.
- A contemporaneous handwritten call note, and although not dated, Mr S confirms that it was written on 28 April 2014. The call note reads:

“0844 7289090

Call Hornbuckle:-

Asked and discussed buying and selling shares

TO BUY

Written Instruction to Hornbuckle saying

How many to buy of what shares

Signed and scanned to clientservicing@hornbuckle.co.uk

+ send Hornbuckle’s Chaps form on www.hornbucklemitchell.co.uk

“Chaps” type in

TO SELL

Use “Investment Sale Form” saying:

Full or part of holding

Scan form (+ post it)

PO-12302

Mark "Urgent"

Either way £30 + VAT fee"

- Mr S says he noted the instructions, covering exactly what he had to do so he would be able to move quickly, without error or delay, once he wanted to sell shares.
- The Terms and Conditions dated 6 August 2012, and 12 December 2012, highlighting section 13 'Investment Management' of the December 2012 Terms and Conditions, quoting "any investment instruction must be communicated in accordance with section 7.2, using the form that we make available on our website for this purpose".
- Page 5 of the SIPP Fee Schedule, dated 1 January 2012, highlighting that a standard investment instruction costs £30. Below this, it is detailed that it includes the "sale/purchase of OEICs, unit trusts bonds, etc". In his view, this includes the buying and selling of shares, is consistent with the other document, and with what he has said previously.
- The Terms and Conditions say they will buy and sell shares, and on the website Hornbuckle provide a copy of the "Investment Sale Form" which indicates Hornbuckle do sell and buy for clients.
- Mr S agrees there was a telephone call which took place on 28 April 2014, but he disputes the subject matter. Hornbuckle's call note says the call was regarding investment purchases and top ups, and Mr S says the contents of that telephone call are recorded in his undated handwritten call note of 28 April 2014.
- Mr S says Hornbuckle's call note is unreliable. A copy of his certificate for Fixed Protection dated 1 March 2014, was attached. Mr S says he made a statutory election for a higher fund cap and so he was no longer entitled to further contributions or top ups.
- Mr S considers himself to be a credible witness because he made contemporaneous notes and he is able to provide first hand evidence of the discussion.
- Why would he sit on his hands when the price decrease started to accelerate in September 2014, and not call Hornbuckle? Mr S is adamant that he called Hornbuckle in September 2014 with the intention to sell shares, and he was told his share certificate could not be found. His call of 16 October 2014 begins by him chasing the issue of the missing share certificate and he asks how he would have known that fact, had he not contacted Hornbuckle previously? Hornbuckle confirmed to Mr S that he would need a stockbroker in order to sell the shares after he had called them, and he could not have known earlier that Hornbuckle would breach the contract by refusing to sell the shares on his behalf and further delay the sale.

12. Hornbuckle considered the comments made by Mr S, and said that:-

- There was no agreement with Mr S in respect of selling shares, therefore Hornbuckle had not 'breached' any agreement.
- The SIPP is self-invested therefore the onus is on the client and not the administrator to make investment decisions. Hornbuckle only acts on instructions. This is outlined in its the Terms and Conditions, section 13 about 'Investment Management' which states " You (any individual trustee) are responsible for selecting and giving us instructions about investments for your plan..."
- With reference to the handwritten note made by Mr S, a number of different inks have been used and there is no way to time stamp the note. It could have been written or added to at any time, and had not been mentioned by Mr S prior to the complaint being considered by Hornbuckle, or when the complaint progressed to this office. Hornbuckle did not agree that it could be used as evidence of a call due to the lack of names, dates or detail. The evidence Hornbuckle holds confirms Mr S enquired only of the process of purchasing shares and not selling.
- Mr S misunderstood the Terms and Conditions because they do not state Hornbuckle will handle the sale of shares for a client. The method of selling shares has always been to use a stockbroker – the process requires Mr S to confirm in writing his instruction. Hornbuckle would provide the stockbroker with instruction to sell and the actual selling process is done by the stockbroker.
- Mr S was aware that a stockbroker was required as is evidenced by the telephone call note of 16 October 2014 which clearly states Mr S wants the share certificate back so his stockbroker can sell the shares when the price is right.
- The Investment Sale Form is a generic form used by members to sell or encash any type of investment, and it acts as an instruction and written authority which is usually forwarded to the investment company to facilitate the transaction. It is freely available on the website for members.
- In respect of the call note made on 28 April 2016, there are specific fields, a business process, which must be completed; in this case 'Investment purchase and top ups'. The call note of 16 October 2014 states the business process as 'Investment sale'. As such, Hornbuckle did not consider Mr S' notes of the 28 April 2014 call reflected the conversation.
- Mr S has misunderstood what is meant by investment 'top up' and his comments about Fixed Protection 2014 ought to be ignored because he has not understood the difference in terminology between 'top up' and 'contribution'.
- The Fee Schedule of 2014 clearly states that share certificates are held with its custodian, therefore is reasonable to expect Mr S to have known this.

PO-12302

- The reason why Mr S was not informed at the outset was because it was reasonable to believe that Mr S was minded to purchase further shares, not sell them.
13. Because Mr S did not accept the Opinion, the complaint was passed to me for consideration.
14. Hornbuckle did not provide any further comments. However, Mr S submitted a detailed summary of events, attaching documents and witness statements. Whilst Mr S repeated many of his key issues, he also said the following:-
- Hornbuckle has breached the principles laid down by the Financial Conduct Authority (**FCA**), namely: integrity; conducting business with due skill care and diligence responsibly and effectively; with adequate risk management systems; market conduct; having regard for customers interests; communicating information in a way that is clear, fair and not misleading; and arranging for adequate protection of assets.
 - Hornbuckle say that his handwritten call note of 28 April 2014 is forged; he considers the statement to be libellous. The burden of proof is with Hornbuckle and it has not done anything to prove it.
 - His instructions of September 2014 were not in writing, nor was his instruction of 16 October 2014, when he contacted Hornbuckle by telephone.
 - Mr S was unable to complete many sections on the application form for the account to be set up, as Hornbuckle alone knew that information. The stockbroker firm had agreed with Hornbuckle that Hornbuckle would complete the form, and that the application form was sent to Mr S for information purposes only.
 - Hornbuckle knew Mr S did not have an IFA because he had informed Hornbuckle previously, and it ought to have known that because there were no deductions from his SIPP to pay such fees.
 - He does not accept that Hornbuckle's, admissions, in its email of 19 November 2014, and referred to in its formal response of 29 April 2016, should be dismissed because it had not been known at the time of writing that the stockbroker had copied Mr S in on its email of 17 October 2014, with the application form attached.
 - Hornbuckle is responsible for the losses because Mr S informed it of the falling prices and that urgent action was required. Hornbuckle did not conduct his account with "due skill, care and diligence".
 - He did all he could to mitigate the losses.
 - There is sufficient evidence to suggest Mr S wanted to sell shares, not buy them.
15. 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

16. Mr S alleges maladministration by Hornbuckle which has caused a financial loss' namely the failure to give Mr S correct information on the process to sell shares held by the SIPP, and the subsequent delays caused in progressing the sale. He says if Hornbuckle had provided clear instructions on the requirement to sell shares; located the share certificate sooner; and completed the application form on his behalf for return to the stockbroker earlier, he would have been able to sell the shares at a more attractive price.
17. My role is to determine whether Hornbuckle have acted, or omitted to act, in such a way that led to the alleged financial loss stated by Mr S.
18. I must first decide whether the initial instruction from Mr S to Hornbuckle took place in September 2014, or on 16 October 2014. Mr S' and Hornbuckle's recollection of events differ in respect of the content of what was discussed in the telephone call that each party considers to be the first point of contact concerning the selling of shares.
19. Due to the passage of time, there is limited evidence available to reach a definitive conclusion on this point. In order for Hornbuckle to facilitate the sale of shares, it required clear instructions from either Mr S or his IFA, and the relevant forms to be completed. I consider Hornbuckle's note of the telephone call of 16 October 2014, as sufficient in detail to find that Hornbuckle were reasonably aware for the first time of Mr S' intention to sell shares. Hornbuckle's email later that day, where it confirms the process that Mr S was required to follow to sell the shares, reaffirms that Hornbuckle took the necessary steps in mid-October 2014 to act on his instruction.
20. There is a clear disagreement regarding the correct process to sell shares and the requirements to be fulfilled. Mr S relied on the Fee Schedule dated 1 January 2012, confirming that standard investment instructions could be made at a cost of £30. In Mr S' view, this includes the sale and purchase of shares. Mr S also understood from Section 13 of the Terms and Conditions, that Hornbuckle would accept an instruction by using the attached investment sale form. I understand why Mr S thought this to be the correct process, however, I accept Hornbuckle's position that the use of a stockbroker to sell shares is widely known to be industry practice. I also note the statement Hornbuckle recorded in the telephone call note of 16 October 2014, confirming that Mr S required the share certificate in order to send it to his stockbroker prior to the sale of the shares. This leaves little doubt that Mr S was aware for the need to use a stockbroker in order to sell the shares held in the SIPP, however there was opportunity available for Mr S to have queried with Hornbuckle the exact requirements he needed to follow, regarding the establishment of a stockbroker account.
21. Once Hornbuckle learned of Mr S' intention to sell his shares it was prompted to inform Mr S of the correct process in order to complete the transaction This was done the following day and the stockbroker emailed the necessary application form to Mr S and Hornbuckle for completion.. There is clear disagreement on whom the onus fell to

complete the application form. Whilst I have considered the position of both Mr S and Hornbuckle, I take the view that Mr S was responsible for completing the relevant sections applicable to him before returning it to Hornbuckle for counter-signature.

22. I note Mr S' disagreement, and his view that by the time Hornbuckle had returned the incomplete application form to him for completion, two weeks had passed, adding further to the alleged unnecessary delay. Whilst there is some scope to consider that Hornbuckle could have been more pro-active and reviewed the application form earlier, in essence, I do not consider this delay was caused by Hornbuckle's failure to complete the form on Mr S' behalf because there was no requirement for it to do so. Overall responsibility for the setting up of the account fell on Mr S and him alone.
23. Mr S is unhappy with the assertions made by Hornbuckle, regarding his handwritten call note made following a call that took place on 28 April 2014. A call clearly took place but Mr S accuses Hornbuckle of claiming the note is forged. Hornbuckle has not said the undated note is a forgery; it has simply said it is a new piece of evidence only introduced after the Adjudicator's initial findings, and it cannot be time stamped as evidence, therefore it could have been produced or added to at any time. I have considered the handwritten call note at length; given the timing of its introduction into the complaints process; the fact that it is undated; and it appears that it has been written using different inks, I agree with Hornbuckle, that there is insufficient evidence to establish that it was contemporaneously written on 28 April 2014 and, therefore, it cannot be reliably used as evidence.
24. The issue of the share certificate remains in dispute, but on balance, I do not consider the time it took Hornbuckle to retrieve the share certificate caused a delay. I accept Hornbuckle's position that share certificates are held by a custodian bank, and the turnaround time of four days for the certificate to be retrieved is not unreasonable.
25. Mr S says Hornbuckle has failed to adhere to FCA Principles, and consequently has been negligent. I sympathise with Mr S' view that the transaction could have happened more quickly, and that he may have been able to sell the shares at a better price than the actual settlement price, thus avoiding the loss he now alleges. However, I do not agree with Mr S' assertion that Hornbuckle has acted in a way that is contrary to its compliance requirements as the SIPP provider.
26. After considering all of the available evidence, it is evident that Mr S attaches far greater weight on Hornbuckle to have completed the transaction for the sale of shares on his behalf, than what can be reasonably expected of Hornbuckle. Whilst Mr S has read the Terms and Conditions to mean that Hornbuckle would carry out an instruction on his behalf, Hornbuckle will, only, ask for relevant instructions, facilitate the request, and complete forms, but the actual sale of the shares is undertaken by a stockbroker. I consider it was reasonable for Mr S to have known that the services of a stockbroker were required in order to sell shares, and that he knew of this, as recorded by Hornbuckle in the telephone call note dated 16 October 2014, and Hornbuckle's email of 16 October 2014, which clearly set out the process required. I have not been presented with any evidence to suggest Hornbuckle misinformed Mr S

of the process, but that rather Mr S understood the process to be different based on his reading and interpretation of the Terms and Conditions and the Fee Schedule.

27. I agree with Mr S to the extent that there was a two week gap where the transaction did not progress because the application form remained incomplete. Again, Mr S puts a greater onus on Hornbuckle to have completed the form on his behalf, including his personal details. I find that Mr S was responsible for completing the relevant application form in order for his transaction to progress, and his failure to do so promptly led to a delay in establishing the stockbroker account.
28. Mr S chose to invest in shares, an investment which came with risks. There was no demonstration of urgency to sell the shares on the part of Mr S, given that he had contacted Hornbuckle in December 2014, confirming that his shares were under performing, and then nine months later, in August 2015, sold 30,000 shares.
29. I do not find that it was Hornbuckle's omission to provide accurate information, or that it was at fault for the time taken to complete the stockbroker application form, which led to the financial losses claimed by Mr S. I would only need to consider what losses Mr S suffered as a direct result of the errors or delays if a definitive finding of maladministration can be established, and I cannot.
30. Therefore, I do not uphold Mr S' complaint.

Anthony Arter

Pensions Ombudsman
23 August 2017

Appendix

Timeline of events

31. Mr S transferred his SIPP to Hornbuckle in December 2012, and bought around 170,000 shares 'off market' for £235,000. An 'old style' share certificate was produced on 22 January 2013, in the names of Hornbuckle and Mr S. Mr S was sent a copy of the old style share certificate for safekeeping.
32. As part of future retirement planning, Mrs S says he contacted Hornbuckle by telephone, the date of the call is unknown, and enquired about the process to "buy and sell shares" in the SIPP. Mr S contends that Hornbuckle informed him it could handle such transactions for a fixed fee of £30 plus VAT. Mr S says he made a personal note of this, but did not date it. However, he maintains that it pre-dates his next call note of 15 May 2014, and says he relied on this information to his financial detriment.
33. Mr S says that he contacted Hornbuckle in September 2014 regarding his intention to sell shares in the SIPP. There is no telephone call recording or call note available from Hornbuckle. However, Mr S says he instructed Hornbuckle to sell his shares because the share price was falling in value. He also says that Hornbuckle informed him that the share certificate could not be located at that time.
34. Hornbuckle, on the other hand, says the first known contact from Mr S, in relation to "the sale of the shares", took place on 16 October 2014, and Hornbuckle has a call note of the conversation which took place with Mr S. Mr S telephoned Hornbuckle to ask why the share certificate was sent to the custodian bank. At first Hornbuckle confirmed this was the normal process with unlisted shares, but Mr S confirmed the shares were AIM listed and he had previously been sent a copy of the old style share certificate to hold. Hornbuckle explained that the share certificate would usually be held with a discretionary fund manager (**DFM**), however in this case, as a DFM was not in place, the share certificate was sent for safe keeping with the custodian bank. Hornbuckle confirmed it would retrieve a copy of the share certificate and forward Mr S a copy. Hornbuckle say Mr S confirmed that he needed the share certificate to send to his stockbroker in order to sell the shares when the price was right.
35. After the telephone conversation ended, Hornbuckle discussed matters internally with senior staff members concerning Mr S' comments regarding his intention to sell shares. Hornbuckle emailed Mr S that afternoon, clarifying the process:-
 - To sell shares, this would have to be done through a stockbroking account (**account**), opened on behalf of the SIPP, and the proceeds of the sale of the shares would be deposited into the SIPP bank account;
 - Mr S would have to provide Hornbuckle with the application form for the account of his choice and any sections which were relevant to Mr S ought to be completed and signed before the form was forwarded to Hornbuckle;

PO-12302

- Hornbuckle would complete the necessary details on the form, and forward this to the stockbroker to open the account;
- Once the account was opened, Hornbuckle would transfer the shares held in the SIPP into the account for Mr S to sell when the price was right.

36. Mr S, responded to Hornbuckle later, on 16 October 2014, thanking it for the information, and commented that for the first time he was being told what needed to be done in order to sell shares. He considered Hornbuckle should have told him this when he had first bought the shares to avoid future delays and losses in a failing market. Mr S asked Hornbuckle :-

- Why the previous copy of the old style share certificate had been passed to him?
- Why was the new share certificate sent to the custodian?
- Why was he not informed?
- Why had he not been told at the outset of the share selling process explained by Hornbuckle to avoid delay and losses now?

37. On 17 October 2014, Mr S contacted the stockbroker firm to open the account, which Mr S confirmed to Hornbuckle by email. In the email, Mr S said the stockbroker would send the application form to Hornbuckle and that Mr S gave his authority for Hornbuckle to liaise directly with the stockbroker. Later that morning, the stockbroker firm sent the application form, by email, to both Mr S and Hornbuckle for completion.

38. On 20 October 2014, Hornbuckle confirmed to Mr S, by email, that the application form had been received from the stockbroker firm, and that it had been passed for processing to a supervisor. Hornbuckle also confirmed it was now holding the share certificate and that it would be sent with the application form.

39. On 21 October 2014, Mr S asked Hornbuckle whether he could deal online with the account. Hornbuckle confirmed the next day that he could do this.

40. On 23 October 2014, Hornbuckle responded to Mr S' queries of 16 October 2014 regarding the custodian process. It said:-

- The share certificate was sent to Mr S in error, Hornbuckle's policy is that all share certificates must be held by a FCA regulated custodian. Where listed shares are held, the stock is held electronically and it is expected that the stockbroker holds the certificate with their custodian. In Mr S' case, there was no stockbroker because the SIPP bought the shares directly, a practice Hornbuckle no longer allowed, hence the confusion that arose following this.
- Hornbuckle is not authorised to hold share certificates; it uses an external custodian. Had the shares been bought via a stockbroker and held in the

account with the SIPP, Hornbuckle would not have been sent the certificate as it would have been held by the stockbroker's custodian.

- Because Mr S was not informed of this information it had highlighted a missing step in Hornbuckle's process.
- Previously, Hornbuckle allowed scheme members to purchase listed shares directly into SIPP's and it did not insist that the stock be held in an account. However, over time the process changed and Hornbuckle now requires that stock be held in an account because of "issues around selling stock quickly and the holding of share certificates".

41. On 27 October 2014, Mr S acknowledged the response from Hornbuckle and continued to wait for the account to be set up. Later on 31 October 2014, Hornbuckle emailed Mrs S requesting that he complete the application form to establish the account.
42. On 7 November 2014, Mr S asked the stockbroker firm to assist in the completion of the form. The stockbroker firm confirmed that Hornbuckle would need to complete the application form.
43. Mr S called Hornbuckle on the same day, to discuss a letter he received from Hornbuckle returning the application form, and requesting that he complete and sign it in order to open the account. Mr S was unhappy that it had been returned to him as he did not know what he needed to complete. Mr S felt Hornbuckle ought to have completed his name and address section, but it explained that the form ought to have been completed before being returned, and that there are specific sections which only he, as the member, could confirm, for example his financial information. There were other sections, which Mr S confirmed that he did not understand how to complete, and was advised to contact the stockbroker to discuss those. Mr S did not accept this and considered Hornbuckle ought to contact the stockbroker because of the delays caused by Hornbuckle. It was confirmed to Mr S that the initial email of 16 October 2014 stated that he would need to complete and sign the account application form before returning it to Hornbuckle. The call was subsequently terminated.
44. Mr S called Hornbuckle again following the previous call. He wanted to raise a complaint about Hornbuckle's delay in raising queries with him and the lack of customer service. It was agreed with Hornbuckle that it would liaise with him and also the stockbroker to complete the form. Hornbuckle confirmed it would contact Mr S on Monday 10 November 2014 to agree the contents of the completed form.
45. Mr S emailed Hornbuckle following the telephone conversation earlier that day, reiterating the issues he wanted an answer to, namely:-
 - When did Hornbuckle receive the form for the account from the stockbroker?
 - What action did Hornbuckle take to complete the form before sending it back to him on 31 October 2014?

PO-12302

- Why was the form not returned to him straightaway?
 - What was the reason for this delay?
 - What efforts were made with him and with the stockbroker to complete the form?
 - Did Hornbuckle feel it had handled the matter well, and in good time?
 - Confirmation of the complaints procedure.
46. On 10 November 2014, the stockbroker firm referred Mr S' application form to its compliance team. There was email correspondence exchange between the stockbroker firm and Hornbuckle, regarding a small delay in the application form being authorised by the compliance manager.
47. Further conversations took place between Hornbuckle and the stockbroker firm on 11 November 2014, concerning completion of the application form. Hornbuckle emailed Mr S the CREST form, and sent the stockbroker firm the share certificate by recorded delivery. Mr S chased the stockbroker for an update, and the stockbroker confirmed the compliance manager was unavailable.
48. Hornbuckle sent the stockbroker firm the completed application and CREST forms on 13 November 2014.
49. On 17 November 2014, Mr S instructed Hornbuckle not to sell the shares because the share price had fallen to less than a third of the value they were when Mr S says he initially tried to organise the sale a month previously.
50. On 18 November 2014, the stockbroker firm confirmed the setting-up of the account.
51. On 19 November 2014, Hornbuckle responded to Mr S' email of 7 November 2014. Hornbuckle said its adviser had confirmed to Mr S by email on 16 October 2014, that in order to open the account he would need to complete and sign the account opening form and return it to Hornbuckle. Hornbuckle received the form directly from the stockbroker firm on 20 October 2014, and it was allocated to be processed, but due to Hornbuckle's increased workload and overdue work, this was not checked and sent to Mr S for completion until 31 October 2014. For this delay, Hornbuckle apologised because it acknowledged that this did not fall within its service expectations. It had been agreed on 7 November 2014 that Hornbuckle would liaise directly with the stockbroker firm the following Monday 10 November 2014 to ensure the account was opened without further delay. Mr S was given the relevant information if he wanted to make a formal complaint.
52. In December 2014, Mr S emailed Hornbuckle, reiterating that the share price continued to perform poorly. He asked whether the transfer fee would be waived, in light of the poor service he had received.

PO-12302

53. Mr S eventually sold 30,000 shares on 24 August 2015, which were settled on 26 August 2015, for a value of around £31,200. He sold a further 30,000 shares, settled on 2 September 2015, for a value of £30,500.
54. On 4 September 2015, Mr S contacted Hornbuckle to confirm that whilst the share price had recovered to an extent, they had not returned to their former value. Mr S considered that had his request of October 2014 been dealt with in time, he could have sold each share at £1.60. Having sold around half of the shares, his loss was estimated to be around £34,000. Mr S also felt he had lost out on dividends and capital gains on the reinvestment of the share proceeds which he would have received, however, he offered to waive that loss if Hornbuckle compensated him £34,000.
55. Hornbuckle responded on the same day confirming that it had received an incomplete application form for the account to be set up, but it accepted that there had been a delay in returning the form to Mr S for completion. Hornbuckle expects forms to be completed before being sent in for counter-signature. Although, there were delays with the account being set up by the stockbroker firm Hornbuckle facilitated the establishment of the account directly and ensured that documentation was dealt with in a timely manner. Hornbuckle did not consider Mr S' claims for compensation were valid because it should not be held liable for fluctuating share prices.
56. Hornbuckle considered Mr S' complaint, and responded to his concerns on 21 September 2015. Hornbuckle did not uphold the complaint because selling shares in the way Mr S describes is not included in the SIPP's terms and conditions.