

Ombudsman's Determination

Applicant	Mr E
Scheme	Cornhill Management FlexMax SIPP (the FlexMax Portfolio)
Respondent	Cornhill Management Ltd (Cornhill)

Outcome

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

Complaint summary

3. Mr E has complained that Cornhill's charges were not fully disclosed on the documentation that he signed. He believes that Cornhill did not invest his pension with the intention of growing it as no units were bought or sold. He has also complained of the time taken to transfer his pension, and says that Cornhill went out of its way to keep his pension invested in its product.

Background information, including submissions from the parties

4. Mr E held a Self-Invested Personal Pension (**SIPP**) with MC Trustees Limited (**the Trustees**). The SIPP was run on an execution only basis. Cornhill manage and administer the FlexMax Portfolio that Mr E was invested in within the SIPP as instructed by Mr E and his advisor (**the Advisor**).
5. On 6 November 2015, the Trustees wrote to every SIPP holder and informed them that Cornhill would be re-balancing the FlexMax Portfolio. It said that the re-balance would take place on 23 November 2015, unless the Trustees had received instruction from the FlexMax Portfolio holder not to perform the switch by 20 November 2015.
6. On 11 November 2015, Mr E informed the Trustees that he did not agree to the switch and that it was his intention to withdraw his funds. The Trustees informed Cornhill of Mr E's intention and requested confirmation of the exit fees the same day. Mr E had also contacted the Adviser and was told to contact the Trustees to arrange closure of the FlexMax Portfolio, which he did.

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7. On 16 November 2015, Cornhill confirmed exit charges totalling £4,110. £2,533.56 was in respect of the unpaid establishment fees, £600 was with respect to the termination fees and the remainder were redemption charges for the individual funds Mr E was invested in at either 6% or 4% of the fund value.
8. On 19 January 2016, the Trustees received a transfer request from Hargreaves Lansdown. Two days later the Trustees issued transfer paperwork to Mr E. It was confirmed that the original completed forms would be required but that the process could be started with emailed copies. On 24 January 2016, Mr E emailed the completed forms.
9. On 26 January 2016, the Trustees requested a sales form from Cornhill to instruct the closure of the FlexMax Portfolio, which was supplied on 1 February 2016. Cornhill also confirmed the exit charges and said it would require confirmation from Mr E that he was happy to continue and pay the fees. The Trustees sought confirmation from Mr E and, once obtained, the Trustees completed and returned the sales form to Cornhill the following day.
10. On 4 February 2016, Cornhill confirmed receipt of the closure request and said that, due to quarterly dealing dates on some investments, the full portfolio was unlikely to be redeemed until the end of April 2016.
11. On 9 February 2016, Mr E's original completed forms were received by the Trustees.
12. On 24 May 2016, Cornhill confirmed to the Trustees that redemption was completed and the Trustees confirmed receipt of the funds.
13. Throughout the process Mr E had been querying the fees that Cornhill had already deducted and those in relation to the transfer.
14. Cornhill say that all the fees, and redemption timescales, are set out in documentation issued to Mr E or the Advisor, and that it was the Advisor's responsibility to make Mr E aware of these before investing in the FlexMax Portfolio. Cornhill maintain that it did not purposely delay the transfer and that any delay was due to Mr E's investment in a quarterly dealing fund.
15. Mr E raised a complaint with the Advisor because it had not disclosed all of the commission charged which formed part of the establishment fees, and were payable over a period of 12 years after the FlexMax Portfolio had been established. The Advisor offered a settlement agreement in respect of these undisclosed commission fees which Mr E turned down.

Adjudicator's Opinion

16. Mr E's complaint was considered by one of our Adjudicators who concluded that no further action was required by Cornhill. The Adjudicator's findings are summarised briefly below:-

- The Trustees are not a party to this complaint and are only referenced to give background to the complaint against Cornhill.
- Similarly, this Office is not able to investigate complaints against advisors, however Mr E has provided a copy of the settlement agreement with the Advisor showing that a payment was offered in respect of the establishment fees. It is up to Mr E to decide if he accepts this or not. He has said that he does not.
- Mr E complains that Cornhill have delayed his transfer and that it took from November 2015 to May 2016 to be completed. However, while it is noted that Mr E made known his intention to transfer to the Trustees on 11 November 2015, and the Trustees informed Cornhill, no transfer or closure paperwork was submitted to Cornhill until the end of January 2016.
- Between 11 November 2015 and 2 December 2015, there appears to have been discussions with regard to exit fees. No confirmation from this time has been provided to suggest that Mr E had instructed the closure of his Cornhill investments following confirmation of, and agreement to, the fees. It appears that it was not until 19 January 2016 that the Trustees received the transfer request from Hargreaves Lansdown.

- One of Mr E's investments was invested in a quarterly dealing fund. The fund booklet explains the redemption process and timescales. It states:-

“Submit a notice of redemption by the 25th day of March, June, September or December for a redemption to be effective as at the end of the subsequent calendar quarter. Redemption proceeds, minus any redemption penalties (if redeeming before the recommended five year investment period), will usually be paid no later than the 25th day of the month following the relevant calendar quarter. So a redemption notice given by 25th March would normally be settled by 25th July.”

- Therefore, the delay between the instruction to transfer in late January 2016 and payment of transfer in late May 2016 was due to the quarterly dealing fund. Notwithstanding the process in the fund booklet, the actual process was completed in May 2016, well before the timescale stated of July 2016.
- Cornhill responded to the Trustees' requests for paperwork, and closure of Mr E's policy, within a reasonable timeframe by executing the redemption of his funds. It is reasonable to expect Mr E, or the Advisor, to have reviewed the fund booklet prior to investing or disinvesting from a particular fund. Therefore, it is not unreasonable for Cornhill to expect Mr E to have been aware of the timescale,, therefore, the Adjudicator did not find maladministration by Cornhill
- The Adjudicator noted that Cornhill informed the Trustees that redemption would be completed around the end of April, which according to Cornhill's own literature is incorrect. In addition to this, on 3 May 2016, Cornhill informed the Trustees,

who in turn informed Mr E, that all redemptions were complete. Whilst this was an error, a short time later, on 9 May 2016, Cornhill clarified the situation. Further to this, on 17 May 2016, Cornhill said that its system showed the funds would not be released until 31 August 2016. However, on 24 May 2016, Cornhill paid the funds to the Trustees. While these inconsistent timeframes could be said to amount to maladministration, and may have caused Mr E some distress and inconvenience, the Adjudicator did not think that the Ombudsman would regard this to be significant, which is the test before any recommendation for non-financial loss. The redemption was still completed within the timescale set out in the fund booklet for the quarterly dealing fund. Therefore, it was the Adjudicator's opinion that no award for non-financial loss should be made.

- With regard to fees, the Adjudicator said that the transfer out fee payable to the Trustees, as well as the establishment fee and termination fee payable to Cornhill are set out in the SIPP and FlexMax Portfolio application form at page 11, which Mr E completed, signed and initialled, on 10 October 2013. The redemption charges for individual funds are shown in the respective fund booklets/factsheets. As stated above it is expected that Mr E, or the Advisor, would have reviewed fund booklets/factsheets prior to investing in and disinvesting from a particular fund. The Adjudicator could not see that Cornhill made an error when applying the fees.
- The Adjudicator considered Mr E's claim that Cornhill did not invest his pension with the intent of growing it as no units were bought or sold. The Adjudicator took the view that it was not Cornhill's role to manage Mr E's funds. Mr E and/or his advisor were responsible for managing his investments and making switches where desired. No units would have been bought or sold unless fund switches had been instructed or additional contributions made. Where no further contributions are paid, and no fund switches are carried out the number of units would not change, it is the unit price that determines the value of the fund.

17. Mr E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr E provided his further comments which are summarised below:-

- Mr E says he originally requested to withdraw his funds from the FlexMax Portfolio by email to the Advisor on 9 November 2015, and then directly to Cornhill and the Trustees on 11 November 2015, but these requests were ignored. Instead Cornhill advised him on what to invest in to provide better returns. Mr E has said that if they had carried out his instruction at this point, it would have been before the 25 December cut off for the quarterly dealing fund, and the transfer would have been completed much earlier. He feels that this has been missed by the Adjudicator.
- Mr E has asked how Cornhill's actions in advising him on alternative investments benefited his pension fund and why he had to meet and explain his rationale for withdrawing from the FlexMax Portfolio to Cornhill. He feels that Cornhill's actions were not in the best interests of his pension investments and, if Cornhill's role was

not to manage his funds as the Adjudicator has said, he doesn't understand why it got so involved.

- Mr E maintains that he never signed an agreement in respect of the redemption charges for the individual funds that he was invested in, and he was not made aware of these charges. His intention was to invest in flexible funds that did not penalise him if he chose to withdraw or move the funds. Mr E said that this intention was documented with the Advisor and sent to Cornhill as far as he is aware.
- Mr E feels that both Cornhill and the Advisor are able to avoid responsibility because the Adjudicator would expect the Advisor or Mr E to have reviewed fund booklets/factsheets prior to investing in or disinvesting from a particular fund. He is penalised because his requests have been ignored and that the companies are rewarded for ignoring those requests.

18. Mr E's comments 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 E for completeness.

Ombudsman's decision

19. There is an email trail on 9 November 2015 between Mr E and his Advisor where he requests that his funds are withdrawn from the FlexMax Portfolio. However, I have seen no evidence that the Advisor passed this request on to Cornhill and I cannot consider the Advisors actions.
20. I recognise that Mr E also raised this request directly with Cornhill and this was acknowledged on 13 November 2015. During the email exchanges the cost of withdrawal was requested. On 16 November 2015, Cornhill confirmed the exit charges with Mr E. The email trail following this confirmation principally concerns alternative options in order to avoid or minimise exit charges, as Mr E had expressed dissatisfaction with these charges. I do not agree that Cornhill were providing Mr E with investment advice. It appears that Cornhill were informing Mr E of alternative funds and services available to avoid paying the exit charges at that point, and to minimise such charges in the future should he decide to withdraw his fund. There was no requirement for Mr E to meet with Cornhill or to explain why he wanted to transfer.
21. On 2 December 2015, Mr E again requested that his funds be withdrawn, he also requested that the charges were reduced by either or both the Advisor and Cornhill. Neither party agreed to this request. As such, there is no evidence to show that Mr E had consented to the exit charges until the end of January 2016 when the Trustee sought this confirmation prior to completing and returning the required sales form to Cornhill. It is reasonable that Cornhill required confirmation prior to disinvestment. Mr E has said that it is within his rights to dispute the charges and that this should not have delayed the transfer. I agree that he is able to dispute the charges, but I do not

agree that it is reasonable for Cornhill to proceed with a transfer prior to agreement to the charges. In addition Cornhill informed the Trustee that it would not be possible to proceed with the transfer without this agreement, this was ultimately a contractual term.

22. I note Mr E's comments that it was his intention when investing in the FlexMax Portfolio to invest in flexible funds that did not penalise him and that he did not sign any document to confirm that he was happy with the redemption charges for the individual funds. I understand that Mr E established the FlexMax Portfolio with the assistance of the Advisor. Cornhill provide an execution only service whereby it follows instructions from a member or advisor. Cornhill invested Mr E's benefits as instructed by the Advisor. Redemption charges are common on medium to long term investments and I would expect the Advisor or member to check whether these applied before investing. Details of the charges were available in the fund factsheets/booklets. By investing in those funds the member is accepting the charges, this does not require an additional signature and it is reasonable for Cornhill to expect Mr E to have been aware of these charges.
23. The FlexMax Portfolio is part of a SIPP. By their nature, SIPP's require the member, and/or their advisor, to take an active role in managing and reviewing the investments and performance. As such, some responsibility must be borne by the member and/or advisor. I note that Mr E says he was not aware of the redemption charges however, information on the redemption charges payable was available and I would expect that a member and/or advisor would actively review available information on the funds before investing or disinvesting. It is not Cornhill's role to provide advice and I have seen no evidence that it did, only that it provided information.
24. Therefore, I do not uphold Mr E's complaint.

Anthony Arter

Pensions Ombudsman
31 October 2017