

## Ombudsman's Determination

Applicant	Mr N
Scheme	Hornbuckle SIPP ( <b>the SIPP</b> )
Respondents	Hornbuckle Mitchell ( <b>Hornbuckle</b> )

## Outcome

1. Mr N's complaint is upheld and to put matters right Hornbuckle shall pay Mr N £500 for distress and inconvenience caused and pay into the SIPP's bank account £1,875.65 plus reimburse its own charges that may have been claimed in respect of processing Mr N's transfer request.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mr N's complaint against Hornbuckle is that he does not believe it has adequately performed its duties as independent trustee and scheme administrator to his SIPP. He also complains about the fees which have been taken.

## Background information, including submissions from the parties

4. Mr N and Mrs N run a haulage business.
5. In 2007 Mr N and Mrs N each commenced a SIPP with Hornbuckle.
6. Subsequently Mr N made an in specie contribution into his SIPP in respect of land and buildings associated with the business. Mr N signed the property application noting himself as the property manager. Similarly, Mrs N made an in specie contribution into her SIPP.
7. The original 99 years lease, dated 7 April 2008, was recorded between Hornbuckle Mitchell Trustee Ltd and Mr N and Mrs N as Trustees and also as both the Lessor and Lessee. The initial rent payable was £7,500 per annum reviewable after five years. Later in 2008 the term of the lease was amended by a Deed of Variation to 10 years.

8. Under the SIPP's terms and conditions all commercial property is held by Hornbuckle as the independent trustee.
9. In late 2015/early 2016 Mr N and Mrs N's financial adviser (who in relation to this matter had been their financial adviser since 2007) notified Mr N and Mrs N that he was leaving the pension industry. Mr N and Mrs N duly appointed a new financial adviser, RWP Consulting.
10. RWP Consulting enquired about the rental agreement on the land and buildings. It was then discovered that no rent had been paid as per the terms of the lease. RWP complained to Hornbuckle on behalf of Mr N and Mrs N.
11. Hornbuckle partially upheld the complaint and offered Mr N and Mrs N each the following redress:

<b>Redress Summary</b>	<b>Mr N</b>	<b>Mrs N</b>
D & I Payment	£250.00	£250.00
<b>Fees Charged</b>		
2009 Property Admin Fee	£115.00	£115.00
2010 Property Admin Fee	£105.25	£115.05
2011 Property Admin Fee	£114.00	£120.00
2012 Property Admin Fee	£114.00	£120.00
2013 Property Admin Fee	£114.00	£120.00
2014-2015 Property Administration - UK other/non-office property fee	£302.40	£237.60
2014-2015 Property Administration - UK single tenant property fee	£201.60	£158.40
2014-2015 Self-Managed Risk Premium fee	£134.40	£105.60
2014-2015 Non block insurance risk fee	£100.80	£79.20
2014-2015 Connected Party supplement fee	£50.40	£39.60
<b>50% reduction to 2016/2017 Property Fees</b>		
2016 - 2017 Property Administration - UK other/non-office property fee	£151.20	£118.80
2016 - 2017 Self-Managed Risk Premium fee	£45.00	£45.00

2016 - 2017 Non block insurance risk fee	£67.20	£52.80
2016 - 2017 Connected Party supplement fee	£50.40	£39.60
<b>Fees Waived</b>		
2015 - 2016 Annual Drawdown Administration fee	£210.00	£210.00
<b>Total</b>	<b>£2,125.65</b>	<b>£1,926.65</b>

12. Additionally, Hornbuckle offered to waive its own transfer charges should Mr N and Mrs N decide that they wished to move to a new SIPP provider.
13. Mr N and Mrs N declined Hornbuckle's offer, but said they wished to transfer without Hornbuckle charging fees for doing so. Hornbuckle refused stating their offer was all encompassing or nothing.
14. RWP Consulting has advised that Mr N and Mrs N have been making backdated rental payments in order to put their respective SIPP's back in the position they should have been in.
15. Amongst other things RWP Consulting say:-
  - While Mr N and Mrs N are trustees their profession is ownership of a haulage yard. They are not sophisticated when it comes to pensions.
  - Mr N was not aware that he was the property manager and he was not aware of any duties he needed to perform.
  - Hornbuckle regularly requested land valuations and should have been aware that no rent was being collected.
  - Hornbuckle cannot expect a layperson to know the intricacies of pension schemes and pensions law.
  - Hornbuckle should refund all fees paid/taken with interest, pay Mr N and Mrs N a sum for distress and inconvenience and allow Mr N and Mrs N to transfer free of charge. Additionally, Hornbuckle should cover RWP Consulting's fees charged to Mr N and Mrs N.
16. Amongst other things Hornbuckle say:-
  - It is a bare trustee. The onus is on the client and their financial advisor to monitor the SIPP.
  - As the property manager it was Mr N's responsibility to make sure that rent was collected. It was not Hornbuckle's responsibility to tell Mr N what he was required to do. The financial adviser at that time should have done so.
  - As joint trustees Mr N and Mrs N should have known their responsibility or at least asked their financial advisor. It was not down to Hornbuckle to inform them what their roles were.

- Until 2016 Mr N and Mrs N failed to notice that the property had not appeared in valuations.
- Mr N and Mrs N agreed to pay Hornbuckle's fees when they took out their SIPP's.
- They are not prepared to pay the costs of RWP Consulting.

17. RWP Consulting has advised that Hornbuckle has charged Mr N and Mrs N fees for transferring to another SIPP provider.

### **Adjudicator's Opinion**

18. Mr N's complaint was considered by one of our Adjudicators who concluded that further action was required by Hornbuckle. The Adjudicator's findings are summarised briefly below:-

- While Mr N and Mrs N are lay-trustees, the non-payment of rent is not a complicated investment matter. Mr N, as the property manager and, with Mrs N, a member trustee, the Lessee and Lessor to the lease agreement had a responsibility to ensure that the rent was being paid and collected.
- Mr N signed the property application as the property manager. If he did not understand the role he was taking on at that time he should not have signed the form.
- Nevertheless, Hornbuckle failed to notice the exclusion of the land/property in annual valuations and that no rent was being paid. This amounted to maladministration.
- Hornbuckle's agreement to re-open its original settlement offers to Mr N and Mrs N, increase the distress and inconvenience payment to each to £500, and not to apply its own charges for processing Mr N's and Mrs N's transfers, was sufficient compensation for Hornbuckle's aforementioned maladministration.

19. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. RWP Consulting, who are representing Mr N and Mrs N, provided its further comments which 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 RWP Consulting for completeness.

### **Ombudsman's decision**

20. RWP Consulting say part of Hornbuckle's annual fees charged was to ensure that Mr N's SIPP and Mrs N's SIPP were run in accordance with the SIPP rules. As the professional trustee it failed to do this. Therefore, Hornbuckle should repay 50 per cent of the total annual fees it has charged Mr N and Mrs N to date, plus the compensation sum suggested by the Adjudicator.

21. While Hornbuckle should have noticed the exclusion of the land/property in annual valuations and the non-collection of rent I agree with the Adjudicator that Mr N, as the property manager and, with Mrs N, a member trustee, the Lessee and Lessor to the lease agreement had a responsibility to ensure that the rent was being paid and collected. They failed to do so.
22. RWP Consulting say its charges to Mr N and Mrs N have trebled, from £500 to £1500 per annum each, as a result of having to deal with Hornbuckle in trying to sort “out the mess” the two schemes were in over the last 14 months. RWP Consulting say these charges are separate from its charges for putting the complaint to Hornbuckle and the Pensions Ombudsman and are nothing to do with the transfer of both schemes. RWP Consulting suggest that Hornbuckle should pay Mr N and Mrs N each a further £500 for the higher charges they would not otherwise have been charged.
23. It was Mr N and Mrs N’s decision to appoint RWP Consulting. Hornbuckle is not liable for the fees that RWP Consulting have subsequently charged them in respect of this matter.
24. Clearly, there has been maladministration by Hornbuckle, but I am satisfied that the redress sum that Hornbuckle has now agreed to respectively pay Mr N and Mrs N makes sufficient amends in all the circumstances
25. Therefore, I uphold Mr N’s complaint.

## **Directions**

26. Hornbuckle shall within 14 days of the finalised Opinion:
  - pay Mr N £500 for the significant distress and inconvenience caused; and
  - pay the SIPP’s bank account £1,875.65 and also reimburse its own charges that Hornbuckle may have claimed in respect of processing Mr N’s transfer request.

**Anthony Arter**

Pensions Ombudsman  
28 February 2017