

## Ombudsman's Determination

Applicant	Mr Y
Scheme	Hornbuckle Mitchell SIPP ( <b>the SIPP</b> )
Respondent	Hornbuckle Mitchell Group Ltd ( <b>Hornbuckle</b> )

## Outcome

1. I do not uphold Mr Y'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 Y's complaint is about the legal fees charged by Morton Fraser, who are on Hornbuckle's panel of solicitors, in relation to the preparation of a lease for a property held within the SIPP. Mr Y says that Hornbuckle should instead have accepted the quotation which he had obtained from another firm of solicitors, Sophie Wagner.

## Background information, including submissions from the parties

4. Hornbuckle did not uphold his complaint. In summary, Hornbuckle said the following:-
  - Mr Y agreed to the terms and conditions of his SIPP, which provide for the payment of fees from the SIPP.
  - It is standard practice within the industry for a lease regarding a property held within a SIPP to be a "fully repairing and insuring" (**FRI**) lease as this protects the pension scheme. Morton Fraser are on Hornbuckle's panel of solicitors because they have an extensive understanding of how pension schemes work.
  - The hourly rate quoted from Morton Fraser was £150 plus VAT. This was lower than the quote from Sophie Wagner, which was £180 plus VAT. The overall cost of the work was invoiced after the work had been completed and this is standard practice.
  - Mr Y and the tenant requested alterations to the lease, which resulted in additional costs from Morton Fraser. If the alterations were not requested, the overall cost may have been lower.

- In an email to Hornbuckle dated 23 May 2016, Mr Y said:

“Can you instruct Sophie Wagner / Hornbuckle Solicitors to prepare the documents...”

Therefore, he did not specify that he would prefer Hornbuckle to instruct Sophie Wagner.

5. Mr Y did not agree with Hornbuckle’s response and he has referred his complaint to us for an independent review.

## **Adjudicator’s Opinion**

6. Mr Y’s complaint was considered by one of our Adjudicators who concluded that no further action was required by Hornbuckle. The Adjudicator did not consider the legal fees to be the result of any maladministration by Hornbuckle and his findings are summarised briefly below:-
  - The payment of legal fees from the SIPP is permitted within the terms and conditions of Mr Y’s SIPP.
  - Hornbuckle instructed Morton Fraser, who charged a lower hourly rate compared to Sophie Wagner, and the overall cost could not have been known until the work had been completed.
  - It cannot reasonably be said that Hornbuckle has done something wrong in instructing a firm of solicitors from its panel, who were charging a lower hourly rate than the alternative quote obtained by Mr Y.
7. Hornbuckle agreed with the Adjudicator’s Opinion and made no further comments.
8. Mr Y did not accept the Adjudicator’s Opinion and the complaint was passed to me to consider. Mr Y provided his further comments in the letter dated 16 July 2017, but these do not change the outcome. I agree with the Adjudicator’s Opinion, I will therefore only respond to the key points made by Mr Y for completeness.
9. In summary, Mr Y’s response to the Adjudicator’s Opinion included the following:-
  - Although the hourly rate quoted by the panel solicitor, Morton Fraser, was lower than Sophie Wagner’s quotation, Sophie Wagner had previously prepared similar leases for the same property on change of tenancy, which met all of Hornbuckle’s requirements.
  - Hornbuckle should have obtained a maximum figure from Morton Fraser, as the time taken to prepare the lease was predictable. Sophie Wagner had estimated an overall fee of £540 to £720 based on 3-4 hours of work, but the final bill from Morton Fraser was about five times more.

- At the time he was not aware that Morton Fraser was a large organisation dealing with mostly institutional leases for large office blocks in a central city location, rather than a modest 800 square feet basement building. Having received a draft lease consisting of 51 pages, the prospective tenant contacted him to say that a shorter lease would be beneficial. As he did not want to risk losing the tenant, he contacted Hornbuckle about a simplified and more suitable lease.
- Due to the time taken for the lease to be simplified, he emailed Hornbuckle to say:

“I don’t know what is happening, I am really getting tired of the situation and wished that we had gone through Sophie Wagner as we would have had everything tied up by now.”
- Morton Fraser’s legal fees, combined with Hornbuckle’s administration fees, exceeded the net income of his pension for the year. He had used some of his other savings to allow a working cash balance in his SIPP and paid for bills relating to his SIPP property from his “own pocket to avoid litigation from the contractors.”
- He could not have anticipated that Morton Fraser would draft an inappropriate lease and that the prospective tenant would ask for simplification of the lease. Due to the lack of control exercised by Hornbuckle, who did not ask for a ceiling or cap on Morton Fraser’s fees, he has not received a pension from his SIPP for a total of 11 months.

### **Ombudsman’s decision**

10. Initially, Mr Y did not specify that he would prefer Hornbuckle to instruct Sophie Wagner. In an email to Hornbuckle dated 23 May 2016, Mr Y said “can you instruct Sophie Wagner / Hornbuckle Solicitors to prepare the documents...” I consider Hornbuckle’s decision to instruct Morton Fraser, based on a lower hourly rate than the alternative quote provided by Sophie Wagner, to be reasonable. Although Sophie Wagner had estimated that it could take about 3-4 hours of work for the lease to be completed, this could not be known with any degree of certainty at that stage.
11. I understand that, with the benefit of hindsight, Mr Y believes Hornbuckle could have intervened to reduce the overall legal costs, by establishing a maximum cap on Morton Fraser’s fees. However, Hornbuckle could not reasonably have anticipated how the process would unfold in this particular case, what the tenant’s requirements would be and the level of work involved. It is possible that the prospective tenant may have requested other amendments to the lease or raised further enquiries, even if the work had been completed by Sophie Wagner.

**PO-16813**

12. In conclusion, I find it unreasonable to say that Hornbuckle should have instructed Sophie Wagner, who quoted a higher hourly charge, based on the speculation that the lease may have been completed quicker than Morton Fraser.
13. Therefore, I do not uphold Mr Y's complaint.

**Anthony Arter**

Pensions Ombudsman  
21 July 2017