

Ombudsman's Determination

Applicant	Mr A and Mr I
Scheme	Curtis Banks SIPP (the SIPP)
Respondents	Curtis Banks Ltd (CB)

Outcome

1. The applicants' complaint against CB 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) CB should pay £750 for the additional loan interest of £750 that Mr I has incurred.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. The applicants have complained that they have been subject to poor administration and negligent advice by CB when purchasing a property for their SIPP.

Background information, including submissions from the parties

4. The applicants had a SIPP with CB and in early 2016 made enquiries about purchasing a property (**the Property**) for investment through the SIPP. The applicants say that they were not familiar with the provisions of a Transfer of a Going Concern (**TOGC**) and the VAT implications. Initially there was a tenant for the Property who subsequently went into administration. CB were aware of this but did not advise them of the difference of having an occupier in the Property and vacant possession. Six days before completion they were told that as the occupier had left they would have to pay £62,000 in VAT on the transaction and Stamp Duty Land Tax (**SDLT**) would be payable in addition.
5. As Mr I had insufficient funds in his account, Mr A had to lend him the money. A loan agreement was drafted and cost £750 plus VAT. The intention was to reclaim the VAT and Mr I would use his share of this to repay the loan. As the VAT refund took longer than anticipated Mr I has incurred additional loan costs. CB have provided incorrect advice about the time periods for the recovery of VAT and have failed to chase up the recovery of VAT except for one chaser by email and a telephone call.

PO-16890 & PO-17007

6. The applicants say that CB have added to the costs of the transaction by, for example, asking for work to be carried out before completion, such as the removal of ceiling tiles. CB have by applying its policies and asking for additional information increased the original solicitor's quote from £3,500 to £9,500 plus VAT. The applicants also say that due to CB's incompetence they have suffered the following approximate charges which they wish to be reimbursed:
 7. TOGC incorrect advice £1,750
 8. Loan Interest £1,500
 9. Increased legal fees £1,500 plus VAT
 10. Transfer fees to new provider £2,000 plus VAT
11. CB say it first became aware of the Property purchase on 19 April 2016, and solicitors were instructed on 11 May 2016. The original completion date was set for 24 August 2016, however, the purchase did not actually complete until 1 September 2016. During this period, it became clear that a loan agreement was needed to afford the VAT due on the property. In addition, Mr I would have to provide additional funds to meet his proportion of the purchase price. These funds were not received until 1 September 2016.
12. CB provides its services on an execution only basis. As such, it would expect the clients to obtain relevant information from their Financial Adviser and/or Solicitors regarding the issues surrounding the difference between having an occupier in the Property at the time of acquisition and vacant possession, and the subsequent implications for VAT and SDLT as well as additional solicitor costs incurred.
13. CB's terms and conditions and literature makes it clear that it is not authorised by the FCA to provide individuals with advice in relation to individual SIPP's. CB recommends that individuals obtain advice where required from qualified professional advisers. The terms and conditions state that nothing in any communication to individuals should be construed as financial or investment advice and investments, whether property related or not, are made at the client's direction or that of appointed advisers.
14. CB are unable to influence HMRC in relation to a refund of VAT. The Property was included in a global registration with one VAT return made for different properties. It was not possible to process the VAT on the Property earlier than the rest. The clients were advised of the timings for VAT reclaims in August 2016 and that the VAT return would be completed in December 2016 with the deadline for completion and sending to HMRC being 7 January 2017. The VAT return was sent to HMRC on 3 January 2017. The clients were advised that it was expected that the VAT refund would be made in January 2017. However, when the VAT was sent to HMRC, its timescales were around 8 to 10 weeks and therefore the VAT refund was not expected until February/March 2017.

15. When CB were advised of the revised HMRC timescales it requested a Fast Track option but it was advised that this option was not available. Furthermore, CB was unable to process the request sooner, as CB had been waiting for the solicitor to confirm that the seller had in fact opted the Property for tax before the application could be made.
16. CB would confirm that there has been no delay in sending the relevant documentation to HMRC. HMRC deal with and settle CB's VAT returns on a bulk payment basis, rather than settling individual VAT returns which means that payments are not settled until the particular batch has been completed fully by HMRC.

Adjudicator's Opinion

17. The complaint was considered by one of our Adjudicators who concluded that further action was required by CB. The Adjudicator's findings are summarised below.
18. The applicants have, in this complaint, raised a number of issues regarding the purchase of the Property for their SIPP and are seeking to recoup all or some of the fees associated with this. The starting point for any dispute over the fees charged for services is whether these fees have been charged in line with the terms and conditions and schedule of fees.
19. CB have maintained that it operates on an execution only basis and it was for the applicants to seek their own independent advice about the effect of the Property being purchased on a TOGC basis and the VAT and SDLT implications. When the applicants took out the SIPP they completed an application form and included in the application were a number of declarations including:

"I confirm that I will rely on my own decisions or advice received from my advisers when making investment transactions and I am solely responsible for the outcome of those transactions. I acknowledge that Curtis Banks Limited and Colston Trustees Limited do not give any advice in relation to the SIPP and its investments."
20. The Adjudicator was of the opinion that given the above declaration the applicants should have been aware that CB offered an execution only service and it did not give advice on property transactions.
21. The applicants also received from CB a Property Guide (**the Guide**) which said that CB "are here to help and guide you through the process of getting the property into the pension scheme". The Guide set out the process for purchasing a property and in section 5 entitled 'How can the purchase be funded?' said:

"There must be sufficient funds available to cover the purchase costs plus adviser's fees and all necessary disbursements (stamp duty etc.) and any VAT payable."

22. Also in section 6 entitled 'VAT' the Guide said:

"There are some circumstances where the sale or purchase of a VAT elected property may qualify as a Transfer of a Going Concern (TOGC) and, although we must VAT elect the property, VAT might not be payable on the purchase price or charged on a sale. Professional advice to confirm whether the TOGC provisions are satisfied may be required from a qualified VAT adviser, at separate cost."

23. The applicants have said that section 6 of the Guide says that advice on VAT can be obtained separately and they requested such advice in an email dated 16 April 2016 from Mr I. The Adjudicator reviewed Mr I's email of 16 April and did not consider that this was a request for CB to act in finding a VAT adviser. The email was addressed to Mr I's solicitor with CB copied in. The Adjudicator considered that it was for the applicants to appoint a VAT adviser.

24. The main issue delaying the purchase of the Property was that Mr I had insufficient funds to complete the purchase including VAT and a loan had to be agreed. This obviously led to an increase in costs and CB's charges but the Adjudicator did not consider that CB can be blamed for that situation arising. The loan was expected to be repaid out of the VAT refund and this took longer to complete than anticipated. However, the Adjudicator noted in CB's summary notes on the complaint that it had identified an error on the VAT return. In the summary notes it says:

"...the property management team have made an error on the VAT return which originally stated that only 50% of the VAT was to be reclaimed. An amendment has been sent to HMRC, however it is unclear at the moment whether this will increase the 8-10 week timescale given for the reclaim."

25. The Adjudicator asked CB if the amendment to the VAT return had led to a delay in the reclamation of VAT. CB was unable to say whether the error on the VAT return had led to a delay in the refund of VAT. Once the error was discovered the revised VAT return was sent to HMRC by recorded delivery on 5 January 2017 two days before the deadline of 7 January 2017. The VAT refund was received in the relevant SIPP account on 8 May 2017.

26. On reviewing the timeline for the VAT return the Adjudicator concluded, on the balance of probabilities, that the initial error on the VAT return did delay the payment of the VAT refund. If HMRC had received the correct information and allowing for the 8-10 week turnaround, the VAT refund should have been made around 17 March 2017 but this was not received until 8 May 2017. As a result, Mr I would have incurred additional interest on the loan and for which he should be compensated. The Adjudicator estimated that the additional interest would be £750 and that CB should reimburse Mr I for this amount.

27. CB accepted the Adjudicator's Opinion but the applicants did not and the complaint was passed to me to consider. The applicants have provided their further comments

which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by the applicants for completeness.

28. The applicants say that not all material has been considered in the Adjudicator's opinion and it does not address points raised at the outset of the complaint and the outlined timescales. These are:
- No mention is made of the advice given by CB's own accountant and property management team or account taken of the applicants relying upon such advice or the duty of care CB owed to them.
 - The applicants formally complained about the ongoing charges of CB despite the poor and negligent service they had received and why they should not pay for such a service.
 - Due to the poor quality of the service, the applicants received, they had no choice but to move to another SIPP administrator and they should not have to pay transfer costs to CB.
 - The applicants highlighted to the Adjudicator that CB had been given additional time to respond by a colleague without CB requesting this when it had clearly missed timescales.

The second and third bullet points above were not even defended by CB in this whole process.

29. The applicants also say they are disappointed in the time it has taken to deal with the complaint and it is now over a year since they made the initial complaint. Also, no mention is made of the CB's conduct throughout this whole process and surely the Pensions Ombudsman should be looking at their licence to operate SIPPS?

Ombudsman's decision

30. The applicants want me to consider the advice given by CB's own accountant and property management team and to take account of the applicants relying upon such advice, also the duty of care which they maintain CB owed to them. As the Adjudicator has pointed out in the Opinion, CB acted on an execution only basis and is not authorised to give advice. Indeed, the applicants completed application forms to acknowledge this and said they would be responsible for their own investment decisions and obtain advice from their own advisers. In fact, I am not persuaded that CB gave any advice to the applicants other than information on the purchase process and the likely timescales for obtaining a VAT refund. It was for the applicants to decide whether they needed external advice on the substantive issue.
31. The applicants have pointed out that they formally complained about CB's ongoing charges for the poor and negligent service they received and are looking to avoid both the fees they incurred for operating the SIPP and the transfer fees for moving to

PO-16890 & PO-17007

a new provider. CB have levied fees in accordance with its fee schedule and although the applicants may not be happy with the level of fees incurred, I do not find that there are any grounds for these to be set aside. The applicants agreed to CB's schedule of fees for both the ongoing maintenance of the SIPP and for the purchase of the Property. The fees for the Property purchase increased, above those originally anticipated, due to the additional work incurred as Mr I did not have sufficient funds in his account to complete the purchase of the Property.

32. The applicants have raised some issues regarding the time granted to allow CB to respond to the complaint. I am aware that the complaint was accepted for investigation in May 2017 after going through our jurisdiction process to see if it was a complaint that could be investigated. A formal response was requested from CB on 1 June 2017 and received on 12 June 2017. I do not find that to be excessive or grounds to alter the outcome of the complaint. Our service is an impartial service where we give both parties the opportunity to give their version of events.
33. Finally, I would confirm that I uphold part of the complaint and that CB should pay Mr I £750 as compensation for the additional loan interest he incurred as a result of the error on the VAT return.

Directions

34. To put matters right CB should within 21 days of the date of this determination pay Mr I £750 for the additional loan interest he has incurred.

Karen Johnston

Deputy Pensions Ombudsman
20 March 2018