

Ombudsman's Determination

Applicant	Miss D
Scheme	Liberty SIPP (the SIPP)
Respondent	Liberty SIPP Limited (Liberty)

Outcome

1. I do not uphold Miss D's complaint and no further action is required by Liberty.

Complaint summary

2. Miss D has complained that Liberty has not been pro-active in completing the sale of her investment in the SIPP resulting in her being unable to access these funds.

Background information, including submissions from the parties

3. Miss D says that in 2011, she was short of funds and consequently, she looked online for a payday loan. She subsequently found an advert for a company which introduced her to an intermediary (referred to here as "MM") who it appears was working for or on behalf of, an overseas property investment company called Spyglass Limited. MM introduced Miss D to Liberty.
4. On 24 November 2011, Miss D completed an application for a self-invested personal pension (**SIPP**) with Liberty. Miss D was treated as a "direct customer" on the basis that there was no adviser involved in the sale of the SIPP, which was carried out on an execution only basis.
5. Liberty maintain that the terms of the introducer agreement are reflected in the document signed by Miss D which made it clear that the Introducer was neither advising clients nor offering incentives to make investments. In fact Miss D received a cash incentive to invest in the plots but there is no evidence that she disclosed this to Liberty.
6. On the SIPP application form, Miss D indicated that she would be transferring the value of her pension with Friends Provident, to the SIPP. A transfer value quotation from around the time states a value of £15,183.47. On the SIPP application form, Miss D indicated that she wished to invest in "SpyGlass Limited" which she further detailed as "USA Land Investments."

7. On 23 December 2011, Miss D entered into a contract with the "Berkovitz Development Group, LLC" to purchase two plots of land. \$10,000 was paid to purchase one plot (**Plot 1**) and \$8,000 was paid for another (**Plot 2**).
8. In 2014, Miss D informed Liberty that she was suffering from poor health and made enquiries into taking her benefits early, later providing it with a medical report.
9. Liberty subsequently agreed to allow access to her pension benefits. It said that once the sale of her investments had been finalised, it would be able to action a request to take benefits.
10. Miss D was able to realise the value of Plot 1. In November 2015, she received a tax-free sum of £4,643 from Liberty and, the following month, she received another sum in relation to the same plot, of £3,600. She has said that this was a difficult and protracted process.
11. Whilst the sale of Plot 1 was being finalised, Miss D also made enquiries to sell Plot 2. From 2016 to the date Miss D referred her complaint to The Pensions Ombudsman, there was extended correspondence between the parties (with exchanges involving two or all parties - Miss D, Liberty and MM), concerning the sale of Miss D's remaining investment. The key points were:-
 - On 23 June 2016, Miss D emailed Liberty saying she had not received any communication from MM since 2015 and Spyglass' website seemed to have closed down, which was concerning her. She said she had emailed Liberty the previous week but had been ignored.
 - Liberty replied the following day, apologising for not responding sooner. It said it had received Miss D's communication and immediately contacted MM, asking him to contact her about her concerns.
 - In July 2016, Liberty pushed for a call with MM in regard to progressing the sale. It said, "the resolve is largely out of our hands and it is becoming increasingly frustrating." MM replied saying he shared Liberty's frustration where he was the intermediary between the client and the seller.
 - On 1 August 2016, MM told Liberty that he had reached an agreement with the original seller, to purchase the land for the initial cost price plus the initial closing costs, a total of \$8,450. He said this was a one-time offer made out of goodwill. Miss D accepted this offer the same day.
 - On 25 August 2016, Liberty chased MM about progressing matters following Miss D's acceptance of his offer. MM subsequently suggested arranging a call between him and Liberty, but this did not take place.
 - On 16 November 2016, MM apologised for not making the call, which he said was due to "Visa issues." A further call was arranged for 28 November 2016, which did take place.

- On 2, 8, 14 and 21 December 2016, Liberty chased MM in respect of the offer made. It received no response and chased again on 4 and 13 January 2017.
- On 21 January 2017, MM apologised for the delays and said a colleague had been brought in to manage Liberty's members. A conference call was arranged for later that week.
- On 2 February 2017, Liberty contacted MM saying it had not heard back from him in relation to Miss D. It said it understood MM was looking to speak with his solicitor first and asked when it was likely to hear back.
- On 13 February 2017, Liberty asked MM and his colleague for an update.
- On 22 March 2017, Liberty chased MM and his colleague for an update.
- On 29 March 2017, MM emailed Liberty saying that he wanted to draw the matter to a close and asked what amount had been agreed with Miss D, saying he would have the contract drawn up that day. Liberty then emailed Miss D saying it had spoken to MM and he was "looking to draw up a contract detailing the original offer." Miss D agreed to this.
- On 7 April 2017, Liberty sent Miss D a contract for the sale of Plot 2. Miss D signed and returned this the following day.
- On 16 June 2017, Miss D chased Liberty, which in turn chased MM.
- In September 2017, Liberty informed Miss D that it had been copied into an email with the title company, saying that it seemed the matter was moving forward.
- Around November 2017, Liberty told Miss D that MM was out of the country.
- On 30 November 2017, MM told Miss D and Liberty that the matter was still with the title company, but it seemed completion would be within 14 days. On 10 January 2018, Liberty told Miss D it had not heard anything further since this email but would chase for an update.
- On 2 February 2018, Liberty told Miss D that the sale had not been completed and the details were with the title company, which was producing the title for sale. Liberty said it had spoken with the title company, which needed to confirm with the buyer that they wanted to go ahead with the sale.
- On 5 March 2018, Liberty chased the title company for an update. The title company confirmed that the title commitment had to be prepared outside its office, which could take some time.
- On 28 December 2018, the title company asked Liberty to send the corporate documents again.
- In January and February 2019, Liberty continued to chase the title company.

12. Liberty's position is as follows:-

- It has a lot of sympathy for Miss D and, since the SIPP was set up, it had always tried to do its best to obtain the best possible outcome for her. Despite its attempts, it had been "rather hamstrung" due to the investment choice she had made. Further, it did not know at the time that Miss D had received a cash incentive to invest in the plots.
- Whilst it had managed to sell Plot 1, it had struggled to ensure the sale of Plot 2 was completed and was still in communication with the agent in Bella Vista in respect to this.
- It would have hoped that before making such an investment, Miss D would have been aware of, or asked about, the selling process. The investment she made was into plots of land that could be sold as residential plots at a future date. Whilst the product provider gave the impression that it could take up to five years before there was any return on the investment; in its experience, realising the investment was not as simple as getting an email from Miss D instructing Liberty to sell it.
- The sale process was on the open market so the plot would need to be listed then advertised. After this, all that could be done was hope that a buyer could be found. It failed to understand how it was at fault for not realising her investment.
- Liberty could not be held responsible for ensuring an investment return where the client was made aware that the investment was high risk, potentially difficult to sell and undertaken without financial advice. On top of this, Miss D's motivation to make the investment was hidden from Liberty at the outset. Had Liberty been aware of her motivation, it would have prohibited her from using the SIPP to make such an investment.

13. Miss D's position is as follows:-

- She had written at least two or three times to the directors of Liberty SIPP and, on each occasion, her letters had been ignored. She had been desperate, not knowing what to do or where to turn and was constantly reaching out for some help but never had a reply.
- She did not deny that she signed certain documents when she opted for the investment. However, she had not signed all the documents which she is said to have.
- She had been told by a variety of Liberty staff members via email that the settlement of Plot 2 was "days away". She was then told there was a "document hold up", a title delay then a buyer issue. She asked for details of those handling the sale but was never given this information.
- Liberty and MM had badly mishandled this matter from start to finish, ignored her and contributed to her suffering.

Adjudicator's Opinion

14. Miss D's complaint was considered by one of our Adjudicators who concluded that no further action was required by Liberty. The Adjudicator's findings are summarised below:-

- Her remit was to consider Liberty's role in the matter and identify whether any administrative failings had taken place. However, the matter was not entirely straightforward in that Liberty was one of several parties and did not, on its own, have the power to sell Plot 2. It was dependent on other parties to carry out their role in this process.
- Miss D made enquiries to Liberty regarding selling Plot 2 in 2015 but seemed to take more decisive action in this from 2016. On average, it appeared Liberty was in contact with MM about the sale every other month. Further, it appeared that at this time, Liberty was in general chasing or waiting on MM for a response.
- By 2017, there appeared to be an agreement between Miss D and Liberty for the sale to take place, but there were delays in finalising this with either MM or the title company. However this was not something which Liberty could be liable for, and beyond regular communication and being cooperative, there was not much further it could do.
- The problems Liberty encountered towards the end of 2017 then seem to have continued in 2018.
- Overall, Liberty had fulfilled its obligations as a SIPP provider to help Miss D realise the investment. There were instances in the overall timeline when it had been less proactive, and then periods when it had been very proactive. However, considering the entire period, it had maintained contact with the main parties and informed Miss D of key developments, such as the contract that was drawn up for the sale of Plot 2.
- Miss D said she had been ignored on occasion but there was no evidence of this. The problem ultimately faced by Miss D, which was that she could not access her pension, was not the fault of Liberty, but was linked to the intrinsic set-up of the investment.
- Liberty had not failed in its obligations to Miss D, nor had it acted unreasonably with regard to selling Plot 2.

15. Liberty accepted the Adjudicator's Opinion. Miss D did not accept the Adjudicator's Opinion and made the following points:-

- She had suffered for years at the hands of Liberty. It was clear how badly Liberty had let her down, lied to her and strung her along. Further, it had made false promises and created unattainable deadlines to give a false indication of a resolution. MM had been impossible to reach yet when she mentioned that she

was escalating the matter to The Pensions Ombudsman, he replied within five minutes.

- She was baffled at how there was not endless evidence of where she had been “lied to, misled, strung along, ignored, fake email attachments etc...” Yet, according to the Adjudicator’s Opinion, this seemed to be acceptable. Was she not entitled to any compensation for the last few years? She was trying to deal with being unable to work and unable to access funds she needed in order to make life easier.
 - She had not heard anything from Liberty for nearly 18 months. She assumed nothing was being done now. The chairman had ignored every letter she had sent and it was her belief that they were waiting for her to die to avoid paying anything.
16. The complaint has now been passed to me to consider. I agree with the Adjudicator’s Opinion and I will therefore only respond to the key points made by Miss D for completeness.

Ombudsman’s decision

17. Miss D’s complaint is limited to the difficulty she is encountering as she tries to realise her investment. Her complaint does not concern the circumstances in which she acquired it in the first place and my findings are similarly limited.
18. I have considerable sympathy for Miss D’s situation and her struggle to access funds belonging to her. There is no question that Miss D has waited an inordinate amount of time for her funds to be realised from Plot 2 and her efforts in the matter are obvious.
19. However, in considering the various exchanges that have taken place over the last few years, it is apparent that Liberty has also made attempts to realise the investment, but that Liberty is reliant on MM to do so. In turn, it also seems that MM is to some extent reliant on the title company.
20. Miss D has said that Liberty misled her during her attempts to realise her investment. She says she has been lied to and “strung along”. However, there is nothing to suggest that Liberty has misrepresented the situation, rather, the information on file suggests that Liberty’s updates to Miss D mirrored what it had been told. For instance, on 29 March 2017, MM said he wanted to conclude matters and would have a contract drawn up. Liberty notified Miss D accordingly. Further, on 30 November 2017, MM directly told Miss D that the matter was with the title company, which was in line with what Liberty had said previously. It is of course regrettable that none of the assurances on progressing the sale have led to its completion, but I cannot see any omission by Liberty which has caused that delay.
21. The fact that the “promises” Miss D was given to complete the sale have not materialised is a matter which Liberty does not have sole control of. What I would

expect is for Liberty to have regularly made enquiries to progress the sale and acted on any information which would facilitate this. I am satisfied that Liberty has done this.

22. Miss D has also said that she has been ignored on many occasions, but I have not seen any specific evidence to support this point.
23. Although I have great sympathy for Miss D's position, I do not consider that the difficulty which she is experiencing in realising her assets is due to maladministration by Liberty and for that reason I do not uphold her complaint.

Karen Johnston

Deputy Pensions Ombudsman
13 March 2020