

Ombudsman's Determination

Applicant	Mr N
Scheme	Curtis Banks 2005 SIPP (the SIPP)
Respondent	Curtis Banks Ltd (Curtis Banks)

Outcome

1. Mr N's complaint 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) within 21 days of the date of this Determination, Curtis Banks shall pay £500 to Mr N, in recognition of the significant distress and inconvenience caused.

Complaint summary

2. Mr N's complaint is that Curtis Banks failed to reinvest funds held in the SIPP in accordance with instructions from his financial adviser (**IFA**), and he has suffered financial loss as a result.

Background information, including submissions from the parties

3. Curtis Banks became the provider, trustee and administrator of the SIPP in March 2015. Prior to this date, the provider was Friends Life (**FL**), the administrator was Capita, and the SIPP held investments in the Genus Dynamic Gold Fund (**Genus**).
4. On 23 January 2015, FL wrote to Mr N's IFA, enclosing an announcement from Genus about a compulsory redemption of its funds. Genus explained that investors had two options. They could either (i) reinvest the redemption proceeds automatically into the Bakersteel Precious Metal Fund (**Bakersteel**) through the SIPP (**the reinvestment option**), or (ii) the redemption proceeds could be paid to the SIPP in cash, for reinvestment (**the cash option**). FL advised the IFA that any instruction under the reinvestment option had to be submitted by 28 January 2015, as Bakersteel's deadline for reinvestment was 30 January 2015 (**the deadline**).
5. FL also wrote to Mr N explaining that its SIPP business was being sold to Curtis Banks. It said that from 13 March 2015, Capita would no longer act as administrator

and the assets would be re-registered in Curtis Banks' name. Due diligence for the transfer was then carried out by FL, Capita and Curtis Banks. 2

6. On 11 February 2015, the IFA called Bakersteel to discuss the reinvestment option. Bakersteel confirmed that Mr N could still reinvest, on favourable terms, when the SIPP received the redemption proceeds under the cash option (**the redemption proceeds**), even though the deadline for applications had passed. Subscription would be possible from 19 February 2015, onwards.
7. On 18 February 2015, the IFA informed Capita that Mr N "would like to roll over into Bakersteel and not take any future redemption proceeds in cash."
8. On 19 February 2015, following a discussion with Bakersteel, Capita informed the IFA that Mr N could not reinvest until the SIPP received the redemption proceeds. It also asked the IFA for instructions about which Bakersteel fund to invest in saying:

"...we will forward the subscription application to our Dealing Team as they will be the ones that place the trade. "Do you know which fund your client is looking to invest into?"
9. On the same date, the IFA replied and said:

"It would be the Bakersteel Precious Metal Fund (EUR)."
10. In March 2015, Curtis Banks took over as provider, trustee and administrator of the SIPP. Between March 2015 and September 2016 inclusive, it received the redemption proceeds from Genus in four transactions. The details of the transactions are set out in Appendix 1. The redemption proceeds were not reinvested and remained in the SIPP, in cash, and valuations were issued regularly to the IFA from 2015 onwards.
11. On 24 August 2016, the IFA contacted Curtis Banks and pointed out that the SIPP valuations showed that the redemption proceeds had not been reinvested into Bakersteel, as requested in the February 2015 emails. The IFA asked Curtis Banks to investigate.
12. On 26 August 2016, Curtis Banks informed the IFA that it had no record of receiving any instructions to invest in Bakersteel, so the redemption proceeds were still being held in the SIPP. The IFA replied that the February 2015 emails showed that there was a compulsory redemption out of the Genus fund into the Bakersteel fund, and Capita clearly understood at the time that "once redemptions were received, they would roll over into the new Bakersteel fund" (**the August 2016 email**).
13. On 30 August 2016, Curtis Banks told the IFA that Capita did not pass on any investment instructions when it handed over the SIPP. It apologised and agreed to investigate Mr N's complaint. It also asked the IFA if Mr N would still like to invest in Bakersteel. In response, the IFA asked Curtis Banks to confirm if a "rebate" would be given on the investment, as market prices were rising fast.

14. On 31 August, 1 and 5 September 2016, Curtis Banks again asked the IFA for investment instructions in order to minimise losses, pending its investigation of Mr N's complaint. On 5 September 2016, the IFA instructed Curtis Banks to invest in Bakersteel. Curtis Banks agreed and said that its compliance team was investigating why the funds were not previously reinvested. However, its initial view was that Capita was at fault.
15. On 22 September 2016, Bakersteel advised Curtis Banks that the reinvestment could not go ahead. The reason was that the trustee of the SIPP was not registered with the Financial Conduct Authority (**FCA**) and could not hold these investments, even though it was a subsidiary of Curtis Banks. No acceptable alternative solution could be found.
16. On 26 September 2016, Curtis Banks informed the IFA that Bakersteel was trying to resolve the problem and that discussions were ongoing. On 3 October 2016, the IFA asked Curtis Banks for an update. The next day, Curtis Banks confirmed that investment in Bakersteel was not possible. On 6 October 2016, Curtis Banks asked the IFA if Mr N would like to make a different investment. Curtis Banks did not receive any further instructions about investment, so the redemption proceeds remained uninvested in the SIPP.
17. On 24 October 2016, Curtis Banks wrote to the IFA and explained that it was upholding Mr N's complaint. It gave its reasons, as follows:
 - Prior to Curtis Banks' takeover of the SIPP, Capita had an arrangement with Mr N for the redemption proceeds from Genus to be reinvested in Bakersteel. However, details of this arrangement were missed from the data transferred from Capita to Curtis Banks so the redemption proceeds were held in the SIPP and not invested as Mr N had wished.
 - It acknowledged that its usual practice was to query SIPP accounts where funds were not invested, and to ask for instructions. However, this was omitted in Mr N's case. It sincerely apologised for not identifying that the redemption proceeds from Genus were to be invested in Bakersteel when they were received in the SIPP.
 - On 24 August 2016, when this came to light, Curtis Banks had agreed with the IFA that the reinvestment would proceed and either it or Capita would cover Mr N for any investment losses resulting from the delay in investing in Bakersteel.
 - On 22 September 2016, Bakersteel informed Curtis Banks that the trustee of the SIPP, appointed in March 2015, was not FCA regulated and could not invest in the fund.
 - As a result, Curtis Banks had advised Mr N to choose another investment or transfer to another SIPP and all fees would be waived. It also offered him £100, as a gesture of goodwill, in recognition of the inconvenience that it had caused.

18. Mr N did not accept Curtis Banks' response and in February 2017, following further negotiations, Curtis Banks agreed to increase its ex gratia award to £250. Mr N did not accept this, saying that he had suffered a loss of £20,073 due to the failed investment and compensation of £250 was inadequate.
19. On 1 February 2018, Aviva (who had taken over FL's SIPP business), gave its comments, although it was not a party to the complaint. It claimed that neither FL nor Capita were responsible for any losses arising from the failure to reinvest in Bakersteel because:
 - The IFA did not submit an application for the reinvestment option to Bakersteel by the deadline so only the cash option remained. The cash option required Mr N to give instructions for investment in Bakersteel. The IFA did not give Capita firm instructions to invest the redemption proceeds in Bakersteel before the SIPP was transferred to Curtis Banks, so Capita had no instructions to pass on.
 - The February 2015 emails were not a confirmed request or instruction to invest in Bakersteel. They referred to "rolling over" from Genus into Bakersteel but the deadline for automatic reinvestment had already passed.
 - Capita had explained to the IFA that the reinvestment in Bakersteel could only take place when the redemption proceeds were received. They were received on staggered dates from March 2015 onwards, after the transfer to Curtis Banks, so Capita was not responsible for reinvestment.
 - Curtis Banks has admitted it should have asked for investment instructions when it became provider of the SIPP in March 2015, and neither FL nor Capita were responsible for any losses.
20. On 14 February 2019, in response to Mr N's complaint, Curtis Banks confirmed that it had acted fairly and reasonably and did not cause investment losses to Mr N. It explained that:
 - It was not responsible for the actions of Capita. Capita itself had disputed whether a clear instruction to reinvest in Bakersteel had been given by the IFA.
 - Curtis Banks is an execution only SIPP provider and its terms and conditions **(terms and conditions)** require instructions to be given before it can reinvest funds. It was not required to monitor funds.
 - It could not act if instructions were not passed on to it by Capita. It needed specific instructions from Mr N or the IFA, to reinvest in Bakersteel, but it did not receive instructions until September 2016.
 - It apologised for not contacting Mr N or the IFA for instructions when it took over the SIPP in March 2015, but it did not agree that it had any responsibility to ask for instructions under its terms and conditions and so it was not liable for any investment losses. It had offered Mr N an ex gratia sum of £250, in recognition

of any distress and inconvenience caused because of its poor service in not asking for instructions.

21. Following receipt of Curtis Banks' response, there was further correspondence between Mr N and Curtis Banks.
22. In March 2019, Mr N rejected Curtis Banks' submissions and alleged that it had breached its duty to have in place adequate internal controls and to keep proper records. Mr N's view was that Curtis Bank should take responsibility for its failures and those of Capita and reimburse him for an estimated loss of £19,245.48. This was calculated as if instructions to reinvest in Bakersteel had been followed when Curtis Banks received the redemption proceeds in the SIPP.
23. Mr N also explained why he had not given Curtis Banks any instructions to reinvest the redemption proceeds from October 2016 to date, and why he had not transferred his fund from the SIPP to a new arrangement. He said he had a concern, agreed by the IFA, that if he transferred the SIPP from Curtis Banks' management, it would take his complaint less seriously. He said that £250 was not sufficient compensation and, if he accepted this sum, it would encourage a system where "lax operating practices persisted". A higher penalty would force providers to (i) tighten up their administrative procedures, (ii) not deploy disinformation as part of complaint processes, and (iii) reconsider how they dealt with their customers.
24. In October 2019, Curtis Banks explained why it had upheld Mr N's complaint but had denied any responsibility for investment losses. It said:
 - It had upheld Mr N's complaint because it had failed to contact him or the IFA to ask for investment instructions when it took over the SIPP, not because it had failed to act on an investment instruction from the IFA.
 - Capita had not provided it with any investment instructions when it took over administration of the SIPP. The IFA had not applied for automatic reinvestment by the deadline and the February 2015 emails were not clear. Both FL and Capita disputed the claim that Mr N gave reinvestment instructions to Capita through his IFA.
 - It had never accepted liability for losses and considered that £250 was an appropriate ex gratia award for any distress and inconvenience caused.

Adjudicator's Opinion

25. Mr N's complaint was considered by one of our Adjudicators who upheld his complaint in part. The Adjudicator's findings are summarised below:-
 - There were errors by all parties, so the responsibility for investment losses could not be attributed solely to Curtis Banks.

- In the Adjudicator's view, even though FL, Capita and Curtis Banks had said that they had carried out joint due diligence on the transfer of the SIPP, Capita should have forwarded the correspondence about the reinvestment in Bakersteel. There was no evidence that it had done so. Curtis Banks should also have reviewed the SIPP account when it took over in March 2015 and afterwards and asked for investment instructions, but it failed to do so.
 - If the IFA had applied for the reinvestment option in time the funds would have automatically rolled over into Bakersteel in February 2015, and the issue would not have arisen. In the Adjudicator's view, the February 2015 emails were not clear enough to be treated as instructions to Capita to reinvest the redemption proceeds in Bakersteel because they said Mr N "would like to roll over into Bakersteel and not take any future redemption proceeds in cash." However, Capita should have queried this instruction with the IFA if it was not clear.
 - In the Adjudicator's view, the August 2016 email shows that the IFA misunderstood that automatic investment into Bakersteel was no longer possible and that instructions to reinvest had to be given. The IFA failed to monitor the SIPP, even though it had received SIPP valuations regularly since March 2015, and did not notice the failure to reinvest until August 2016. Curtis Banks' terms and conditions show that it was not responsible for making investments decisions.
 - In the Adjudicator's view, Mr N and the IFA had a duty to give Curtis Banks instructions to invest the redemption proceeds, as soon as possible, in order to reduce any investment losses. On 6 October 2016, Curtis Banks had asked the IFA for investment instructions, following confirmation that the investment in Bakersteel could not proceed for regulatory reasons. To date it had not received any investment instructions and the redemption proceeds remained uninvested.
 - In the Adjudicator's view, Curtis Banks had admitted maladministration in not seeking investment instructions from Mr N or his IFA in March 2015 and thereafter. This had caused significant distress and inconvenience to Mr N and an award of £500 was appropriate in recognition of this.
 - In the Adjudicator's opinion, the failure to reinvest in Bakersteel was not solely due to Curtis Banks even though it had admitted maladministration. Any financial loss that arose as a result of Mr N's funds not being invested in Bakersteel could not be attributed to Curtis Bank's failure to ask for investment instructions in March 2015, when other parties were at fault. There was no evidence that Curtis Banks was liable for any errors by Capita or FL.
26. Mr N did not accept the Adjudicator's Opinion and provided further comments. He said that the February 2015 emails gave clear and specific instructions to Capita to reinvest in Bakersteel. So, he maintained that Capita and Curtis Banks were responsible for his investment losses.

27. In addition, Mr N queried why the Adjudicator had concluded that there were “errors by all parties” and simultaneously concluded that Curtis Banks was solely responsible for an award of £500. He said that such an award made a mockery of financial regulation, worked in favour of corporate interests, acted against the interests of the consumer and did not inspire public confidence. He concluded that:

“ I didn’t reinvest because I always believed that this process was due to be completed imminently, within the foreseeable future, in a time frame that might be considered reasonable and then I would be in a position to make a considered decision on “what next?” And yet, here we are, nearly four years after the original incompetencies and errors talking about £500 compensation for what looks like deep-rooted corporate ineptitude. I am deeply unhappy about the conclusion that “Mr N and the IFA had a duty to give Curtis Banks instructions to invest the redemption proceeds, as soon as possible, in order to reduce any investment losses. Curtis Banks’ own subsidiary was an entity unregulated by the FCA meaning that any reinvestment could not go ahead”.

28. In response, Curtis Banks said:

“We can’t explain why the previous administrator failed to act on instructions. We appreciate Mr N’s frustrations but this doesn’t really alter our position. This was not an instruction to us and when we took over administration, we were not aware of the investment requirements. If there is evidence to suggest that the previous administrator is at fault, these concerns should be raised with them directly. We still cannot accept liability for any alleged loss.”

29. It confirmed that it had not assumed liability for any errors made by Capita and FL as they remain in operation and responsible for any errors in their own administration prior to the handover of the SIPP in March 2015. In addition, the SIPP was “execution only” and its terms and conditions required an investment manager to be appointed for the SIPP who would give instructions about investments.
30. Relevant extracts of the terms and conditions are set out in Appendix 2.
31. The complaint was passed to me to consider. The further submissions provided by Mr N do not change the outcome of his complaint. I agree with the Adjudicator’s Opinion and I will therefore only respond to the key points made by Mr N for completeness.

Ombudsman’s decision

32. Mr N’s complaint is that Curtis Banks failed to reinvest the redemption proceeds from Genus into a Bakersteel fund in accordance with instructions given to Capita by his IFA in February 2015 and he suffered financial loss as a result. Curtis Banks denies responsibility for any investment losses.
33. Only Curtis Banks is the subject of Mr N’s complaint. I am only able to make a finding against Curtis Bank if I decide that its maladministration resulted in Mr N incurring a financial loss or non-financial injustice. I am unable to consider whether FL or

Capita's actions amounted to breach of law or maladministration as they are not a party to this complaint. Curtis Banks is not responsible for any errors which may have been made by FL or Capita as it did not assume responsibility for either of those company's actions when it took over the SIPP in March 2015.

34. Curtis Banks has admitted its maladministration in not asking Mr N or the IFA for investment instructions, when it took over the SIPP. However, I do not consider that this maladministration directly caused any investment losses. The SIPP's terms and conditions provide that Curtis Banks was only required to act on instructions from Mr N or his IFA. Curtis Banks sent valuations which showed the lack of investment. The IFA, and through him Mr N, were therefore on notice that instructions were needed. From March 2015 to August 2016, the IFA did not give Curtis Banks instructions to invest nor queried why the redemption proceeds had not been reinvested. Accordingly, I do not consider that Curtis Banks is responsible for any losses that may have arisen from non-investment of the redemption proceeds between February 2015 and August 2016.
35. In August 2016, the IFA gave Curtis Banks instructions to invest in Bakersteel but, for regulatory reasons, Curtis Banks could not carry this instruction out. Accordingly, Curtis Banks gave Mr N the option to reinvest in alternative investments, but Mr N chose not to do so, explaining that he wanted to make a point about Curtis Banks' lack of corporate responsibility. I find that Mr N decided of his own accord not to reinvest his investment from August 2016, even after Curtis Banks had specifically invited him to do so.
36. For the above reasons, I do not find that Curtis Banks is liable for any financial losses arising because the redemption proceeds in the SIPP have not been reinvested.
37. I find that Curtis Banks' maladministration in failing to properly review the SIPP in 2015 and consequently in falling below its own standards of customer service has caused Mr N significant distress and inconvenience. Awards for distress and inconvenience are relatively modest and are not regulatory penalties, which I have no power to impose. It is my view that an award of £500 is appropriate in recognition of the significant distress and inconvenience caused by the failing which has been admitted by Curtis Banks.
38. Therefore, I uphold Mr N's complaint in part.

Directions

39. Within 21 days of the date of this Determination, Curtis Banks shall pay £500 to Mr N, in recognition of the significant distress and inconvenience that it has caused.

Karen Johnston

Deputy Pensions Ombudsman

17 January 2020

Appendix 1**Redemption proceeds received in the SIPP**

Date	Amount
23-March-2015	£13,551.58
5-May-2015	£4,009.41
21-September-2015	£2,637.72
8 September-2016	£1,076.63

Appendix 2

Extracts from Curtis Banks 2005 SIPP Terms and Conditions applying in March 2015

Clause 7 Statements

Statements for the designated account will be sent to your Financial Adviser. If you do not have a Financial Adviser statements will be sent to you.

Clause 8.1 Investments

Curtis Banks Limited does not provide investment advice and is not registered as an investment adviser to the Plan. You are therefore required to appoint an Investment Adviser when you take out the Plan. Curtis Banks will perform the investment administrator role. Curtis Banks will not accept any liability for the performance or choice of investments nor the performance or choice of any Investment Adviser.

Investment Advisers must be an individual or firm that is authorised to transact investment business within the UK.

Clause 11 Instructions

Where the investment administration is being performed by Curtis Banks instructions must be made in writing by your appointed investment adviser. Urgent instructions may be given by contacting Curtis Banks dealing desk by telephone or fax but must be confirmed in writing...

Curtis Banks will act on verbal or faxed instructions but is not responsible for instructions not received in writing and we recommend that receipt of a fax is verified by telephoning your account manager.

These instructions will be acknowledged in writing, if applicable, your Investment Adviser will receive a contract note...

Clause 21.2 Variation

Curtis Banks reserves the right from time to time by giving you 30 days written notice so far as it is practicable to do so to make such changes to the Terms and Conditions as are reasonably required ...

Extracts from Curtis Banks 2005 SIPP Terms and Conditions applying from June 2018

Clause 7.8

We will not be under any duty to consider or advise on the general or specific merit, suitability or appropriateness of any actual or proposed investment purchase or disposal and therefore you do not benefit from the rules on assessing suitability.

Clause 7.9

We will not be responsible for advice given by any investment manager or any exercise of discretion by an investment manager.

Clause 8.1

Where an investment manager is appointed you are appointed by us for the purposes of giving investment instructions to the investment manager on our behalf.

Clause 8.2

You will be responsible for notifying us of the investment manager that you would like to have appointed in respect of your SIPP. We will not appoint an Investment Manager in respect of your SIPP without your direction.

Clause 8.14

Neither we nor the Trustee are responsible for your choice of investment manager and are not responsible for any loss caused by any investment manager or....unless such loss is attributable directly or indirectly to any fraud negligence wilful defeat or breach of regulatory duty on the part of. Curtis Banks.

Clause 9.2

You or your investment manager (appointed in accordance with these terms) may give us instructions to acquire or sell an investment in your SIPP. Where we are instructed, we in turn will direct the Trustee to execute or sell that investment.

Clause 9.3

All instructions to us to make changes to investments must be given by secure messaging through our website. The methods of communication can be agreed on an individual basis in exceptional circumstances in advance of the instructions being given.

Clause 9.5 (d)

We will be entitled not to direct the Trustee to acquire an investment in accordance with your instructions if in our reasonable opinion the carrying out of the instructions is impossible, unlawful or contrary to any agreement by which we or the Trustee are bound