

## Ombudsman's Determination

Applicant	Mr E
Scheme	Curtis Banks SIPP ( <b>the SIPP</b> )
Respondent	Curtis Banks

## Outcome

1. Mr E's complaint against Curtis Banks is partly upheld. To put matters right, Curtis Banks shall follow the directions set out in paragraphs 40 and 41 below.

## Complaint summary

2. Mr E complains that Curtis Banks delayed his in specie transfer and he is unhappy with the service he received during that time. He argues that there were delays with the following:
  - issuing documentation;
  - contacting him about an outstanding invoice;
  - responding to his correspondence; and
  - processing a VAT reclaim.

## Background information, including submissions from the parties

3. Mr E initially requested an in specie transfer of his assets, which included a Standard Life investment portfolio, in November 2016. However, the acts and omissions that Mr E is complaining about started from March 2018.
4. On 28 March 2018, Curtis Banks' appointed solicitor (**the Solicitor**) submitted an invoice (**the Invoice**) to Curtis Banks.
5. On 16 April 2018, Mr E wrote to Curtis Banks with a 'Change of Trustee' document (**the Document**). Curtis Banks returned this on 30 April 2018, and Mr E subsequently sent this to the receiving scheme.

6. On 3 May 2018, Curtis Banks contacted Mr E as it required his authority to pay the Invoice. Mr E queried this the following day. He then chased a response on 13 June 2018.
7. On 9 May 2018, the receiving scheme returned the Document as it contained an error. So, Mr E sent a replacement Document to Curtis Banks for it to complete, which it returned in electronic form on 25 May 2018.
8. In early June 2018, Mr E received Curtis Banks' hard copy of the Document, but it appears that it provided an incorrect signatory list. The latter was rectified via email and Mr E then sent the information to the receiving scheme. Following this, the receiving scheme completed the required paperwork on 22 June 2018, and the investments held in his Standard Life investment portfolio transferred on 4 July 2018.
9. On 25 July 2018, Curtis Banks responded to Mr E's queries about the Invoice, advising that it remained outstanding and that his authority was needed.
10. On 31 July 2018, Mr E complained to Curtis Banks. He questioned why the authority that Curtis Banks previously held for him could not be used in this instance. He said that he was not surprised that the Solicitor was chasing Curtis Banks as it had taken from 4 May 2018 to 25 July 2018 to respond to his queries. He said he considered Curtis Banks' response unsatisfactory.
11. On 3 September 2018, Curtis Banks informed Mr E that the reason it required his authority again was because there had been a procedural change following the closure of its office in Market Harborough. So, any invoice over £2,000 required explicit authorisation from the member. Mr E emailed the next day, providing Curtis Banks with the authority to settle the Invoice, which was done the following day.
12. On 6 September 2018, Mr E complained to Curtis Banks again. He highlighted that he had already raised a complaint on 31 July 2018, but it was only acknowledged a month later. He said that the Invoice was submitted on 28 March 2018, but Curtis Banks did not contact him about his authorisation until 3 May 2018. So, he was looking for an award as this had delayed the completion of the transfer. Additionally, he did not think that Curtis Banks had adequate resources to deal with the Invoice request or in respect to sending out correct signature forms for transferring investments, which "took weeks to replace them/rectify the error." So, he wanted a refund of his transfer fee.
13. On 24 September 2018, Curtis Banks issued its complaint response. It agreed that it had failed to respond to Mr E's emails in a timely manner and that its complaints procedure had not been followed correctly. So, it offered £100 to Mr E. However, it did not agree that it had delayed the completion of his in specie transfer, for the following reasons:-
  - The process of completing an in specie transfer to another scheme involves re-registering the underlying investments held, in this case a Standard Life

investment portfolio and properties, as opposed to selling the investments held and transferring as cash.

- The transfer of the properties was a formal legal transaction and as such needed the services of solicitors for both of the pension providers involved. While it was possible for the SIPP to cover third party costs in relation to the transfer, such as the solicitor fees, it was necessary for the pension administrator to ensure that each payment made had been authorised by the underlying investor or investors.
  - Curtis Banks had previously settled fees in line with terms and conditions that Mr E was in agreement with.
  - Curtis Banks' delay in contacting Mr E, regarding the authority to settle the Invoice received from the Solicitor in late March 2018, was not the level of service it strived to provide.
  - It provided an explanation for the request for authority on 3 September 2018, confirming that there had been a procedural change following the closure of its office in Market Harborough. Mr E responded to this with his authority to settle the Invoice, so it was subsequently paid on 5 September 2018.
  - While the service had fallen short of what Curtis Banks would expect, Mr E was made aware on 3 May 2018 that his authority was required to make the payment, but Curtis Banks did not receive this until 4 September 2018.
  - The investment portfolio successfully re-registered on 18 July 2018. However, Curtis Banks held Mr E's cash element in the SIPP bank account, as it required its requested VAT reclaim from HM Revenue & Customs (**HMRC**).
  - It did not agree that an award for financial loss was warranted for the time it took for the transfer to complete. The investment portfolio remained invested and the opportunity to invest or make a partial cash transfer existed throughout the process.
  - It concluded by providing referrals to the Financial Ombudsman Service (**FOS**), as well as The Pension Ombudsman's Office (**TPO's Office**). The letter included the following information: "Where your unresolved complaint concerns the administration of your SIPP you should in the first instance direct your complaint to the Pensions Ombudsman."
14. The following day, Curtis Banks received HMRC's cheque in relation to the VAT reclaim. This cleared on 1 October 2018.
15. On 10 October 2018, Curtis Banks transferred the cash element of the SIPP, which the receiving scheme received on 12 October 2018. Curtis Banks then wrote to the receiving scheme and Mr E to confirm that the SIPP had closed, on 19 October 2018. It included a breakdown demonstrating the assets and values.

16. On 22 October 2018, Curtis Banks wrote to Mr E, to say that it had not received a response from him in relation to its offer. At the end of this letter, it only made reference to the FOS. Mr E replied on 29 October 2018, as he was dissatisfied with Curtis Banks' response. In particular, he noted the following:-
- He had received different referral rights for his complaints. Mr E said that Curtis Banks' complaint response dated 24 September 2018, indicated that he should approach TPO's Office as his complaint involved the administration of the SIPP. However, in Curtis Bank's letter dated 22 October 2018, it had only referred to the FOS.
  - He had been advised by the receiving scheme that it had received, what it presumed to be, the cash element of the SIPP on 12 October 2018. However, Curtis Banks had not provided an explanation for it.
  - The first time he had been informed about the VAT reclaim from HMRC was in Curtis Banks' letter dated 24 September 2018. Previously, he had only been told that the cash held in the SIPP had not yet been transferred because of the Invoice.
17. On 7 December 2018, Curtis Banks emailed Mr E, noting that he had referred his complaint to TPO's Office. It apologised that its letter dated 24 September 2018 did not provide details for both FOS and TPO's Office (even though it had) and said that Mr E's additional complaints had been noted and would be responded to.
18. On 17 December 2018, Curtis Banks issued its additional response. It did not agree that it was at fault and provided the following explanations:-
- It provided a timeline of the interactions it had with the receiving scheme in relation to the cash element of the SIPP (see the Appendix).
  - Part of the administrative duties involved with Mr E's SIPP was the preparation, completion and submission of quarterly VAT returns to HMRC. Although these submissions are undertaken, separate notifications are not issued to clients to advise them of the fact. However, further information and details could be supplied if a member requested this.
  - The last quarterly return administered by Curtis Banks was for the period of 1 June 2018 to 31 August 2018, indicating a VAT reclaim of £333.33 was due to the SIPP. Once this had cleared, it was credited to Mr E's SIPP on 1 October 2018.
  - In relation to the complaint referral rights provided, Curtis Banks contacted Mr E on 7 December 2018, where it was acknowledged that he had already referred his complaint to TPO's Office. During this telephone call, Curtis Banks also confirmed that Mr E could have referred his previous complaint to the FOS or TPO's Office.

### **Mr E's position**

19. Curtis Banks has breached the Financial Conduct Authority's (**FCA**) Rules in relation to complaint handling.

20. It took over five months to pay the Invoice, which it had delayed contacting him about.
21. There had been no mention of a delay as a result of the HMRC VAT reclaim until September 2018. As the properties had transferred from Curtis Banks on 28 March 2018, during the first VAT quarter of the calendar year, he questioned why a VAT return had been done for the third quarter. He believed this should have been finalised in the second quarter.
22. Curtis Banks issued incorrect paperwork that delayed the in specie transfer by about two months.
23. He tried to get Curtis Banks to transfer the majority of the cash element of his SIPP during a telephone call, but it refused.
24. Curtis Banks had apologised for the service it provided and not denied its “shortcomings”. These have resulted in delays and additional work, but an award has not been offered in recognition of this.

### **Curtis Banks’ position**

25. It follows the FCA’s Dispute Rules, so its normal process is to inform members of their rights to refer their complaint to either FOS or TPO’s Office.
26. While it did not have a service level agreement for responding to member enquiries, it aims to respond as soon as possible. If it is unable to, it should try to keep the client informed as to the reasons why and set expectations.
27. The delay between Curtis Banks receiving the Invoice and contacting Mr E about it was caused by an internal change of process.
28. The quarterly VAT return was for the period ending 31 August 2018, which was submitted to HMRC on 13 September 2018. It received a cheque from HMRC on 25 September 2018 which cleared on 1 October 2018. After reviewing when the properties had transferred, it agreed that the VAT reclaim could have been processed in the second quarter.
29. It could not find any telephone calls that contained a transfer request regarding the cash element of the SIPP. Nor could it explain what happened with the change of Trustee documentation.

### **Adjudicator’s Opinion**

30. Mr E’s complaint was considered by one of our Adjudicators who concluded that there had been maladministration. The Adjudicator’s findings are summarised below:-
  - Based on the information provided, Curtis Banks caused an undue delay with regard to the ‘change of Trustee’ documentation for the Standard Life investment portfolio. When it returned this paperwork, it contained errors which were not rectified until early June 2018. So, Curtis Banks caused an approximate five week

delay, plus additional work for Mr E, which can be taken into account as part of the distress and inconvenience caused. Although Mr E wanted a refund of the Transfer fee as a result, the Adjudicator did not think this was appropriate.

- Curtis Banks had accepted and attributed the delay in contacting Mr E concerning the Invoice due to an internal process change. In the Adjudicator's opinion, it should not have taken Curtis Banks over five weeks to inform Mr E about the Invoice. Given the policy change regarding obtaining the member's authority, it could be argued that Curtis Banks should have pre-empted Mr E's question about needing his confirmation. Instead, it took Curtis Banks from 4 May 2018 to 3 September 2018 to provide the explanation.
- Irrespective of this, the Adjudicator did not hold Curtis Banks solely responsible for the impact this had on Mr E's in specie transfer. Mr E was aware that his authorisation was required from 3 May 2018 but chose not to provide this until he received Curtis Bank's explanation. Although it took Curtis Banks an unreasonable length of time to provide the explanation, this did not prevent Mr E from authorising the payment but querying it at the same time. By withholding his authorisation it was the Adjudicator's view that Mr E had accepted the effect this had on his transfer.
- Mr E's complaint was not acknowledged when it ought to have been, but he received a response within eight weeks so the Adjudicator could not say there was an undue delay. By providing referral rights to both TPO's Office and FOS, Curtis Banks had adhered to the FCA's (DISP) guidance that was implemented in April 2018. The Adjudicator understood why different referral rights may have been confusing. In particular when Curtis Banks' communication dated 22 October 2018 only made reference to FOS. However, Mr E could have raised any questions with Curtis Banks, TPO's Office or FOS.
- There was a brief delay in notifying Mr E and the receiving scheme that the cash had been transferred. Mr E may have benefited from being informed about the transfer prior to 19 October 2018. Nevertheless, it would have been clear to the receiving scheme that this was what it received on 12 October 2018, based on Curtis Banks' email dated 8 October 2018. The latter outlined the approximate cash figure that it would be sending, and the receiving scheme confirmed receipt of the cash to Curtis Banks on 15 October 2018.
- It would have been disappointing for Mr E to only learn about the VAT reclaim in Curtis Banks' complaint response dated 24 September 2018. Curtis Banks agreed that the VAT reclaim could have been completed in the second quarter enabling HMRC's cheque to clear by 1 July 2018. Taking that into consideration, in the Adjudicator's view, Curtis Banks should have been in a position to transfer the cash element of the SIPP by 5 September 2018. So, it was likely that the transfer would have completed on 14 September 2018.

- Having listened to the available telephone call recordings, it did not appear that Mr E requested a partial transfer of his cash. So, there was no financial loss in that respect. However, Mr E may have experienced an investment loss for the time between 14 September 2018 and 10 October 2018. In the Adjudicator's view, Mr E should be invited to show what he did with the cash element of his SIPP after it had transferred in October 2018. If he could demonstrate that he had experienced a loss as a result of the transfer not completing in September 2018, Curtis Banks should transfer the amount required to put Mr E in the position he would have been in had it transferred at that point.
- The Adjudicator noted that Curtis Banks had offered Mr E £100 for the way in which it had handled his complaint and the time it took to respond to his emails. After including the errors and time taken to issue the correct documentation for the change of trustees, it could be argued that significant distress and inconvenience had been caused. In particular, the compounded effect of having to wait for: the Document; a response to his queries in relation to the Invoice; and an acknowledgment of his complaint, must have been frustrating. Consequently, in the Adjudicator's view, Curtis Banks' offer for non-financial injustice should be increased to £500.

31. Curtis Banks accepted the Adjudicator's Opinion, but Mr E did not, so the complaint was passed to me to consider. His further comments are summarised below:-

- Curtis Banks had delayed the transfer of the cash because it did not contact him about the Invoice in a timely manner and it asked for authorisation when this was not required. He had only ever accepted the terms and conditions set by Bridgewater Pension Trustees, a former trustee, where it stipulated that no authority would be requested. He did not accept Curtis Banks' terms and conditions, which is why he chose to leave them. So, he was within his rights to ask for clarification.
- He realised that the in specie transfer would not have been able to complete without the authorisation, but all the required authorisations had been provided. He had approved the quote for the Solicitor's fees on 1 August 2017, so authority had already been provided. Mr E provided a copy of this email, where he had said, "please accept this email as authority to proceed."
- He believes that Curtis Banks overlooked his email dated 1 August 2017, and that the delays were as a result of its administrative error. He questioned why Curtis Banks had not provided a copy of this email to TPO's Office. He also queried why it did not find this email and refer to it after receiving his emails in relation to the Invoice and his authorisation. He wanted to know why the Invoice could not have been paid considering he had already agreed to the quote.
- He believed that more consideration should be taken of the time taken by Curtis Banks when contacting him about the Invoice, to settle the Invoice and responding to his enquiries about it. This is especially so when he has not been provided with

any explanation of why it took Curtis Banks five months to reply to his email, despite receiving reminders and delaying the transfer of his SIPP.

- He noted that Curtis Banks was 'happy' to pay its invoices without any authorisation, despite his requests that they were not paid as a result of his dissatisfaction with Curtis Banks' acts and omissions. He wanted to know why this was the case, when he had not accepted Curtis Banks' terms and conditions.
- It was Curtis Banks' "appalling administration" which was the reason for him changing SIPP administrator. A time period of seven months to transfer cash holdings was unacceptable.
- He had expected the cash element of his SIPP in March 2018, so they would have been invested in similar investments to his current investment portfolio. The market rose strongly between March to the beginning of October, which was the exact time frame of the period in question, but by the time he got his money, the markets were too high and it was too late.
- He wanted to highlight that, in his opinion, Curtis Banks had not completed any task satisfactorily and had caused delays on every task it had to perform to transfer his assets to his new SIPP provider.

32. I note the additional points raised by Mr E, but I agree with the Adjudicator's Opinion.

### **Ombudsman's decision**

33. I agree that Mr E provided his authorisation in 2017 for the Solicitor to be appointed and that he agreed to the quoted fees. However, Curtis Banks' discretionary policy changed in 2018, which meant that from that point, any invoice for £2,000 or more would require the member's authorisation. So, Curtis Banks would not have needed to refer back to Mr E's email dated 1 August 2017. As a result, I cannot see that Curtis Banks did anything wrong in asking for Mr E's authorisation.
34. Mr E has argued that he did not agree to Curtis Banks terms and conditions and that Curtis Banks was happy to pay its invoices without authorisation. However, the terms and conditions would have automatically applied until Mr E's transfer had completed. In addition, the administrative fees that applied to the SIPP would not be subject to Curtis Banks' internal discretionary policies concerning invoices.
35. With regard to the time taken for Curtis Banks to contact Mr E about the Invoice, this cannot be considered as reasonable. But it is clear that this did not have a detrimental impact on Mr E's transfer. This is because the earliest date that Mr E's transfer could have completed would have been after HMRC's cheque cleared, had the VAT reclaim been processed in the second quarter. As this would have been approximately around 1 July 2018, and Curtis Banks contacted Mr E before then, I cannot see that it would have affected the transfer. Having said this, I appreciate that



learning about the delay would have contributed towards Mr E's overall distress and inconvenience.

36. Mr E has also asked for an explanation for the time taken by Curtis Banks to respond to his queries. It appears as if Mr E's queries about his authorisation had been referred internally which subsequently caused delays, so it is clear that there was maladministration on the part of Curtis Banks. I recognise that if Curtis Banks had responded to Mr E's email in a timely manner, his authorisation would have been provided more quickly, which may have had an effect on the transfer. Nevertheless, Mr E could have mitigated his circumstances, particularly if he thought he had already given his authority for such payments, by reconfirming his authorisation at an earlier date. Consequently, I cannot hold Curtis Banks solely responsible for the delay caused by the outstanding Invoice.
37. I understand that Mr E had expected the cash element of the SIPP to have been transferred by March 2018. As a result of the VAT reclaim, the earliest the transfer could have completed would have been in July 2018, had Curtis Banks not delayed this process. So, had Mr E re-authorised the payment of the Invoice at any point between 3 May 2018 and 1 July 2018, the transfer could have completed earlier than it did. Mr E did not provide the required authorisation until 4 September, so it does not appear that the transfer could have completed until 14 September 2018. Consequently, Curtis Banks shall only cover the potential investment loss between 14 September 2018 and 12 October 2018.
38. I have noted that Curtis Banks also caused delays with the transfer of the Standard Life investment portfolio, which would have contributed towards Mr E's distress and inconvenience. It is clear that Curtis Banks caused delays with the Invoice, the Standard Life investment portfolio, the VAT reclaim and with responding to Mr E's queries. So, I find an award for significant distress and inconvenience is appropriate.
39. I uphold Mr E's complaint in part and make the following directions.

**Directions**

40. Within 14 days of the date of this Determination, Curtis Banks shall pay £500 to Mr E in recognition of the significant distress and inconvenience caused.
41. If Mr E provides satisfactory evidence within a reasonable timeframe, demonstrating an investment loss as a result of the delayed transfer of the SIPP's cash element between 14 September 2018 and 12 October 2018, Curtis Banks shall transfer an amount equal to the investment loss to Mr E's current pension provider within 28 days of receiving the evidence. Should the transfer incur any additional charges and/or sanctions, Curtis Banks shall pay the additional costs.

**Anthony Arter**

Pensions Ombudsman  
03 December 2020

## Appendix

### **Timeline provided by Curtis Banks to Mr E on 17 December 2018, in relation to its interactions with the receiving scheme with regard to the SIPP's cash element**

- 27 September 2018 - The receiving scheme contacted Curtis Banks requesting confirmation of when it could expect to receive the final cash balance from the SIPP.
- 28 September 2018 - Curtis Banks responded to say that it had received a cheque relating to the previous quarter's VAT reclaim from HMRC, which was being processed. It also advised the receiving scheme that once it had cleared, Curtis Banks would be in a position to make the final payment due. The receiving scheme acknowledged receipt of this correspondence on the same day.
- 4 October 2018 - The receiving scheme contacted Curtis Banks to confirm when it could expect to receive the final cash balance held. Curtis Banks responded the same day saying the payment instructions had been issued so that payment could be processed.
- 8 October 2018 - After receiving a request from the receiving scheme, Curtis Banks confirmed that the transfer figure would be approximately £127,471.00 although this was subject to change.
- 10 October 2018 - Curtis Banks transferred the final cash balance of £127,418.67 to the receiving scheme.
- 15 October 2018 - The receiving scheme contacted Curtis Banks to say that it had received the expected funds.
- 19 October 2018 - Curtis Banks issued three separate letters: one to Mr E; one to Mr E's business address; and a third to the receiving scheme. All of these letters confirmed that the cash had been paid and that a total of £1,671,738.27 had been forwarded to the receiving scheme. They each included a breakdown of the assets and values of these as well.
- 22 October 2018 - Curtis Banks received an email from the receiving scheme with a request for the value of each asset held within Mr E's SIPP, with relevant valuation dates.
- 23 October 2018 - Curtis Banks confirmed that it had sent the final transfer paperwork but reconfirmed the values and a copy of the 19 October 2018 letter.