

## Ombudsman's Determination

Applicant	Mr T
Scheme	The Lifetime Self Invested Personal Pension ( <b>the SIPP</b> )
Respondents	Hartley Pensions Trustees Limited ( <b>Hartley</b> )

### Outcome

1. Mr T's complaint against Hartley 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), Hartley shall pay Mr T £500 for the significant distress and inconvenience he has experienced.

### Complaint Summary

2. Mr T complains that his election to request a buy-back option on Storefirst storage units (**the Units**) purchased through the SIPP was not exercised within the specified timeframe by Hartley. As a result Mr T is still paying Annual Management Charges (**AMC**) for the SIPP.

### Background information, including submissions from the parties

3. On 7 November 2011, Mr T completed an application form (**the Application**) for the SIPP. Mr T signed it to indicate he had read the 'Key Features of The Lifetime SIPP' leaflet and that he had been notified of the AMC he would be liable for.
4. On 18 May 2012, Mr T completed the purchase of the Units through the SIPP. The Units were sub-leased from Storefirst. The sale included an "Option to Purchase" agreement (**the Agreement**) signed by Mr T and Storefirst. The terms of the Agreement were that:-
  - a. Mr T could submit a request that Storefirst exercise a buy-back of the Units within one month of the fifth anniversary of the sale completion.
  - b. Storefirst could buy-back the Units from Mr T at the original sale price.
  - c. It had 5 years from receiving a valid request to exercise that option.
  - d. It retained an "absolute discretion" over the decision to buy the Units back from Mr T.

5. On 1 February 2017, Mr T wrote to Storefirst requesting that it exercise the buy-back option on the Units. Storefirst subsequently refused Mr T's request because it was not submitted within the correct one-month period.
6. On 6 March 2017, Mr T emailed Hartley to query when he could submit the Storefirst buy-back option. On the same day Hartley emailed Mr T stating that the fifth anniversary of the original purchase would be 18 May 2017. Hartley said it would retain a copy of Mr T's request form and send it to Storefirst on the relevant date. Hartley also queried if Mr T would like the Units marketed for re-sale.
7. On 18 July 2018, after learning that his instruction was not submitted to Storefirst, Mr T complained to Hartley. He said that Hartley had failed to submit the buy-back option request form to Storefirst and he was now making a significant financial loss on the Units. Mr T also said that it was unfair that he was liable for further AMC charged by Hartley because of its error.
8. On 31 July 2018, Hartley responded to Mr T's complaint. It apologised and said that Mr T's instruction had not been carried out because of a "human error". Hartley noted that Storefirst had the "absolute discretion" to exercise the buy-back option and there was no guarantee it would have chosen to do so, if the instruction had been correctly submitted.
9. On 2 October 2018, after further correspondence, Hartley provided its final response to Mr T's complaint. Hartley's response is summarised below:-
  - a. Hartley acknowledged that it had not submitted Mr T's request to Storefirst. However, it did not agree that this had led to Mr T sustaining a financial loss.
  - b. The buy-back option was not guaranteed and solely at Storefirst's discretion. To date Storefirst had not exercised the option to purchase storage units back in cases where requests were successfully submitted by other members.
  - c. Mr T agreed to pay the AMC when he completed the Application in line with the SIPP's terms and conditions. The AMC was still payable because the SIPP was actively managed and Mr T still owned the Units.

## **Adjudicator's Opinion**

10. Mr T's complaint was considered by one of our Adjudicators who concluded that further action was required by Hartley. The Adjudicator's findings are summarised below:-
  - a. Hartley agreed that it did not send Mr T's election to Storefirst and it could not be submitted retrospectively. There is no dispute that that Mr T has been disadvantaged as a result.
  - b. Hartley's error did not cause Mr T to sustain a financial loss. The Agreement stipulated that Storefirst retained the 'absolute discretion' to buy-back the Units

from Mr T. The Adjudicator had seen no evidence to suggest that Storefirst would have exercised that option, if Hartley had submitted it correctly.

- c. Mr T was compensated by the Financial Services Compensation Scheme (**FSCS**) in relation to being mis-sold SIPP investments. Mr T is dissatisfied with the service he received from Hartley and does not consider himself liable for on-going AMC and business rates. However, Mr T owns the Units and they are still held within the SIPP. FSCS compensation has not altered the fact that Mr T still owns these investments. Mr T is liable for the AMC on the Units, in accordance with the SIPP's terms and conditions set out in the Application.
- d. In the Adjudicator's view, Hartley's failure to submit Mr T's request to Storefirst caused him significant distress and inconvenience. Hartley should award Mr T £500 in acknowledgement of the non-financial injustice he experienced.

- 11. Hartley accepted the Adjudicator's Opinion. However, Mr T did not and the complaint was passed to me to consider. Mr T provided his 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 Mr T for completeness.

### **Ombudsman's Decision**

- 12. Mr T says that Hartley cannot disprove his assertion that Storefirst might have accepted his buy-back election, had it been correctly submitted. However, it is not for Hartley or me to disprove Mr T's complaint. The onus is upon Mr T to provide evidence in support of his arguments. I have seen no evidence to suggest that, on the balance of probabilities, Storefirst would have accepted Mr T's buy-back request. Consequently, I do not find that Mr T has sustained a financial loss.
- 13. In his comments, Mr T says that it is "risible" for Hartley to describe its failure as a "human error" because he is still financially liable for AMC on investments that he considers to be worthless. I appreciate the difficult position in which Mr T finds himself. However, Mr T is still liable to pay AMC in accordance with the terms of the Application. I agree with the Adjudicator's view that Hartley's failure to submit Mr T's buy-back request caused him significant distress and inconvenience. Consequently, I agree that an award of £500 is appropriate in the circumstances.
- 14. I partly uphold Mr T's complaint.

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## **Directions**

15. Within 21 days of the date of this Determination, Hartley shall pay Mr T £500 in acknowledgement of the significant distress and inconvenience he has experienced.

**Anthony Arter**

Pensions Ombudsman  
28 August 2019