

Ombudsman's Determination

Applicant	Mr X
Scheme	Curtis Banks SIPP (the SIPP)
Respondents	Curtis Banks Colston Trustees Limited (the Trustee)

Outcome

1. Mr X's complaint against Curtis Banks and the Trustee is partly upheld. To put matters right Curtis Banks shall, within 14 days of the date of this Determination, transfer the £1,440 charged to the SIPP for 'Annual Non-Block Insurance Fees' and VAT to Mr X's current pension provider and pay any charges and/or sanctions that may be incurred as a result of the transfer.

Complaint summary

2. Mr X has complained about the additional fees that his SIPP incurred in relation to his property investments in 2017 and 2018, and pension as a whole. He argues that it was not made clear to him that the SIPP charges would increase. Further, he did not see how the increase in fees was justified as nothing "fundamentally changed within [the] SIPP between [the period before and after the fee changes]." He would like £5,282.50 refunded and £1,000 for the distress and inconvenience.

Background information, including submissions from the parties

3. Mr X became a member of the SIPP with Curtis Banks in 2010. In doing so, he agreed to the following statement from the SIPP fee schedule issued in 2009:

"We reserve the right to amend our fees at any time. We will give you one month's prior written notice of amendments and if you do not accept the revised fees we will allow you 3 months in which to transfer to a new provider and will maintain the existing fees within this period."
4. On 25 August 2016, Curtis Banks wrote to its SIPP holders, including Mr X, to inform them of changes that were due to take effect from 1 October 2016 (**the August 2016 Letter**). Curtis Banks highlighted that some of these changes involved adjustments to the charges, so it had enclosed a revised Schedule of Fees (see Appendix A for a list of applicable charges). As a result of these changes, Curtis Banks gave the SIPP

holders the option to transfer to another pension product within three months of 1 October 2016. If a SIPP holder opted for this, Curtis Banks said it would waive its scheme transfer out fee.

5. Mr X did not transfer out of the SIPP, and so from 1 October 2016, the amended charging structure was applied. A schedule of the charges Mr X incurred after this date are outlined in Appendix B.
6. On 20 June 2018, Mr X emailed Curtis Banks to query the increase in charges, as he did not believe he had agreed to them.
7. On 28 June 2018, Curtis Banks provided Mr X with a breakdown of the charges that had been applied to the SIPP. It informed Mr X that copies of the invoices could be found on its internet portal and that its latest fee schedules were on its website.
8. Mr X responded on 1 July 2018, and raised questions about the following:-
 - The increase in charges.
 - The annual non-block insurance fee, as he did not know what this was for.
 - The annual property administration fees as these were in addition to the annual administration fee.
9. On 3 July 2018, Curtis Banks replied with the following:-
 - Any fee changes or changes to the SIPP's terms and conditions were confirmed in writing in advance. This allowed members to transfer to another provider with Curtis Banks' transfer out fee being waived.
 - The non-block insurance fee covered additional administration required by Curtis Banks to ensure that the insurance policy was in line with its requirements.
 - It listed 17 items that the annual property administration charge covered, including "issuing rent demands".
 - The individual responding on behalf of Curtis Banks did not set the level of the fees so could not comment on the increases.
10. On 19 July 2018, Mr X complained to Curtis Banks about a number of concerns, which included charges applied to the SIPP. Mr X said that changes made to the charges could not be covered by a generic document (the August 2016 Letter). Further, he claimed that some of the administrative duties covered by the fees had not been undertaken.
11. On 13 September 2018, Curtis Banks responded to Mr X's complaint, accepting that its service should have been better in respect of a number of the concerns Mr X had raised. In recognition of the distress and inconvenience it may have caused it offered an award of £150. However, with regard to the charges applied to the SIPP, it noted the following:-

- “Our fees are flat rate and fully detailed in our fee schedule, a copy of which [Curtis Banks has] enclosed for your convenience. [...] [Curtis Banks has] also enclosed a copy of your SIPP application, in which your adviser has confirmed that you have been provided with a copy of the fee schedule during the fact-find process and that you have signed confirming you have seen this document, and your acceptance of the scheme terms and conditions.”
- “It is true that work will differ from one plan and policy to another, however the fee charged is a flat rate fee charged as per our fee schedule and terms and conditions, which you will have signed agreement to. We offer a block insurance policy for our investors, we reserve the right to charge additional fees for those which choose not to take up this option.”

Mr X’s position

12. Although he had complained to Curtis Banks about “several issues”, the SIPP charges were the only outstanding complaint.
13. The August 2016 Letter gave “no indication of any significant changes to charges.” Rather, it said there may be adjustments. He believed that when the charges increased as much as they had between 2016 and 2017, unambiguous notice of this should have been provided.
14. The letter concluded with, “We regret that some of these changes involve additional charges, but in most cases these will have little or no effect or for some, will result in a reduction of fees...” which he found misleading.
15. He argued that Curtis Banks had not reviewed his insurance policies. Nevertheless, he received invoices that contained charges for his non-block insurance. When he pointed out to Curtis Banks that it had not vetted any of these insurance policies, he said that Curtis Banks responded with: “these flat rate fees are charged, irrespective of the work undertaken.” He believed that this was inconsistent with the August 2016 Letter and questioned Curtis Banks’ integrity.
16. He argued that Curtis Banks had not carried out the rent demand covered by the annual property charge, as per its email of 3 July 2018.

Curtis Banks’ and the Trustee’s position

17. Fees were charged at a flat rate in relation to the types of asset held and their specific circumstances.
18. The changes made to the fee schedule were made in accordance with the terms and conditions, as members were given 30 days’ notice. There was also an offer to waive the normal transfer out fee, should any member wish to transfer away, in light of the changes being introduced.
19. For Mr X, the primary change was the introduction of different property-related fees. As Mr X held three property investments, his annual fees increased. Nevertheless, all

the charges were made in line with the revised 'Terms and Fee Structure' confirmed to Mr X in August 2016. As Mr X did not request a transfer within three months of the August 2016 Letter, he was bound by the new fee structure of the SIPP.

20. The fees charged covered the general administration involved. Curtis Banks does not track individual work items as it does not charge on a time-costed basis. In relation to individual property investments, not all of the tasks that are listed as contributing towards the administration fee, are required each year. For the non-block insurance, Curtis Banks' usual process is to complete a review to ensure the terms of the cover arranged meet its requirements and sufficiently protect the interests of the SIPP. It had tried to obtain information from Mr X about his non-block insurance, in order to vet this, but had not received a response from him. However, it was unable to substantiate that it attempted to contact him.
21. The work that Mr X claimed was not carried out, was identified in 2018. Curtis Banks was not sure why outstanding rent from June 2015 was not chased, but the terms of the lease did not require a specific invoice to be sent and the connected tenant should have paid rent due on the relevant days.

Adjudicator's Opinion

22. Mr X's complaint was considered by one of our Adjudicators who concluded that there had been maladministration on the part of Curtis Banks. The Adjudicator's findings are summarised below:-
 - When Mr X joined as a member of the SIPP, he agreed to the terms and conditions and became bound by them. He also received the SIPP fee schedule, which specified that the fees could be amended with one month's written notice. If members did not accept the amended fees, Curtis Banks would allow members three months to transfer to an alternative pension provider. By issuing the August 2016 Letter, Curtis Banks satisfied these requirements.
 - The August 2016 Letter also contained a revised schedule of fees which, in the Adjudicator's view, clearly outlined that an annual fee of £550 would be applicable in Mr X's circumstances, along with separate, annual administration charges for property and land. It was Mr X's responsibility to ensure that he had read and understood the August 2016 Letter and the associated schedule of fees. If he did not agree to the new charges, he could have transferred to a different provider. As he did not, he became bound by the new charging structure.
 - The Pensions Ombudsman cannot impose charging structures on pension providers as this is a commercial decision for the provider. So, the Adjudicator could only assess whether the fees paid were correct, based on what was agreed. In her opinion, the charges and fees had been applied in line with the fee schedule, so she did not agree that there had been an error.

- Mr X argued that some of the fees should be waived as not all of the work was carried out. However, the fees were applied on a flat rate basis and individual work items were not tracked. So, the failure to issue a rent demand on one occasion does not render the entire fee unjustified. Further, this omission was rectified with little impact, so a partial refund was not warranted.
- With regard to Curtis Banks' response about the charges being applied regardless, and Mr X's thoughts in relation to this, it was the Adjudicator's view that Curtis Banks was explaining the flat rate nature of its charging structure. So, she did not think it was inconsistent with the August 2016 Letter.
- Curtis Banks said it had tried to vet Mr X's non-block insurance by contacting him to obtain the insurance details. However, it had been unable to substantiate this. Given that these fees were applied recently, the Adjudicator had expected Curtis Banks to have had a full record of its correspondence with Mr X. Without this, she could not be certain that the actions took place, which supported Mr X's assertion that the insurance was never vetted. So, her view was that the 'Annual Non-Block Insurance Fee' had been applied in error and that this part of Mr X's complaint should be upheld. She recommended that these fees, plus the applicable VAT, should be transferred to Mr X's current pension provider and that Curtis Banks should cover any charges and/or sanctions that may be incurred as a result of this.
- An award of a £1,000 would be considered where there had been: a serious level of distress and/or inconvenience that had materially affected the applicant; this occurred on several occasions; there was a lasting effect over a prolonged period of time; and the respondent was slow to put matters right. The Adjudicator was not persuaded that these factors applied in this case, as the only error she had identified was the application of the non-block insurance fees which Mr X did not query until June 2018. This suggested that the fees did not appear to be an immediate concern, so an award was not warranted.

23. None of the parties accepted the Adjudicator's Opinion and the complaint was passed to me to consider. Mr X, Curtis Banks and the Trustee provided their further comments and the main points are summarised below.

Mr X's comments

24. He says that he has experienced a serious level of distress for the following reasons:-
- Curtis Banks stopped issuing visible invoices following the changes made to its charges. He did not use the portal as he did not think this was user-friendly, so the excess fees were not noticed for some time. He submitted a complaint to Curtis Banks in June 2018, so there has been a lasting affect over a prolonged period of time.
 - Curtis Banks was slow to put things right and, to date, it has not put things right.

- Over the past two years, he has spent considerable time investigating the facts and communicating with Curtis Banks and The Pensions Ombudsman. This has caused serious inconvenience and has had a material effect on his use of time.
 - The result of the above, in addition to discovering that Curtis Banks had inappropriately charged him for work not undertaken, has caused him a serious level of stress.
25. The SIPP annual administration charges covered multiple services, the vast majority of which did not apply to his properties. So, Curtis Banks did nothing in return for these fees for a two-year period, on the basis that its fee structure is a flat rate basis and it was allowed to do this. He questioned whether this basis of charging was acceptable and whether this was “exaction” rather than fees charged on a commercial basis.
26. The August 2016 Letter said that “we regret that some of these changes involve additional charges, but in most cases, these will have little or no effect for some, and for others will result in a reduction of fees”. It omitted to say that for some there would be a considerable increase in fees. This omission combined with the statement provided on the August 2016 Letter can only be seen as “deliberate deception and purely misleading.”
27. It was not possible to see from the complex set of information included, what future charges might be. He said, “to omit any sort of suggestion or clear warning that charges may be about to increase 300-400% is undeniably unethical and immoral and can only have happened through a deliberate act of deception, or pure negligence toward [its] client.”

Curtis Banks’ and the Trustee’s comments

28. They do not agree that there are grounds on which they should consider the refund of fees charged for allowing Mr X to externally insure the property assets held within the SIPP.
29. The fees charged are based on the individual circumstances of the assets held. Curtis Banks’ fees are charged on a flat rate basis dependent on these circumstances. In this case, Mr X had arranged external insurance cover and it was his responsibility to provide details and copies of all insurance each year. This was so that Curtis Banks could review these and ensure cover was in place for the property investments.
30. There is a fee charged for allowing this, which is documented in Curtis Banks’ Schedule of Fees and Terms and Conditions. Mr X was aware of his responsibilities and the costs and charges involved. Curtis Banks’ actions are dependent on the support of the underlying client and it was Mr X’s responsibility to provide relevant insurance information. So, Curtis Bank and the Trustee believe that all fees remain due and are not refundable.

31. I note the additional points raised by the parties but I agree with the Adjudicator's Opinion. The reasons for my decision are set out below.

Ombudsman's decision

32. Mr X questions whether the August 2016 Letter went far enough to warn members of the potential increased charges. He believes that by omitting to specify the possible increase, this amounted to negligence or a "deliberate act of deception". I disagree. Curtis Banks satisfied its terms and conditions by writing to members of the SIPP to inform them that there would be changes made to its charging structure. While the information in the August 2016 Letter suggests that most members would not be affected, it clearly indicates that in some cases, there would be an increase in charges. So, it would have been Mr X's responsibility to check how these changes affected him, by reviewing the accompanying Schedule of Fees.
33. I note Mr X claims that the information provided was complex and it was not clear what the future charges would be. Having reviewed this information, I am satisfied that it contained everything necessary for a member to calculate the charges that would start to apply to their SIPP. If, after reviewing the information, Mr X was unsure or required confirmation of his charges moving forward, he could have contacted Curtis Banks. Consequently, I do not consider that Curtis Banks was required to do more in respect of the August 2016 Letter, regardless of how much the charges had increased for Mr X.
34. With regard to the Annual Administration Charges, Mr X questions how this form of charging was acceptable. The Schedule of Fees that accompanied the August 2016 Letter signposts members to Curtis Banks' Property Guide for details of the work covered by the standard service. It was his responsibility to ensure that these changes and/or services were suitable for the assets he held in the SIPP. If Mr X disagreed with the charges, or he did not think the work would be applicable for his properties, he had the opportunity to transfer. By remaining a member in the SIPP, Mr X accepted the 'standard service' and consequently the fees.
35. Curtis Banks argues that the non-block insurance fee is for allowing members to externally insure assets held within the SIPP. On the other hand, its Property Guide suggests that the fee is to cover:
- reviewing and agreeing the policy wording;
 - assessing the proposed level of cover and the associated exclusion clauses; and
 - confirming that all of the pension scheme requirements have been met.
36. Curtis Banks claims that it was Mr X's responsibility to provide the relevant insurance information. Taking into consideration that Curtis Banks says in its Property Guide that it is responsible for the insurance, it should be able to demonstrate its attempted contact with Mr X. However, it has no information to confirm that it did. Consequently,

it has nothing to show that it carried out the work listed above, despite the insurance being its responsibility. Without confirmation of Curtis Banks' attempted contact with Mr X in relation to the non-block insurance, there is no work for the fee to 'cover'. So, the non-block insurance fee cannot be applied.

37. Mr X believes that an award for serious distress and inconvenience is appropriate. As I have only found that the non-block insurance fee was applied in error, I can only assess the distress and inconvenience that has been caused by this rather than all of Mr X's other complaints.
38. While I appreciate that Mr X did not find Curtis Banks' portal user-friendly, that does not mean that the information regarding the non-block insurance was unavailable to him at the time it was applied. He could have questioned these fees from November 2017. The fact that he chose not to use the portal suggests that he was not concerned with the fees that were being applied. In addition, it can be argued that Mr X ought to have known that these were going to be applied as they were listed in the information provided in August 2016. So, the application of these fees should not have caused distress and inconvenience.
39. I acknowledge that the non-block insurance fee error was not identified by Curtis Banks. However, as it believes that it tried to contact Mr X in relation to the insurance, it would have been unusual for it to come to the same conclusion as mine. So, I do not agree that it has been slow to put matters right. Further, it responded to Mr X's complaint within eight weeks so I cannot see that it caused an undue delay. I have also taken into account the fact that the non-block insurance does not appear to have been Mr X's main complaint and how he could have mitigated the situation by transferring after reviewing the August 2016 Letter. As a result, I do not consider the circumstances have met our starting point of significant distress and/or inconvenience and so no award is applicable in this instance.
40. I uphold Mr X's complaint in part.

Directions

41. Within 14 days of the date of this Determination, Curtis Banks shall:-
 - Transfer the £1,440 charged to the SIPP for 'Annual Non-Block Insurance Fees' and VAT to Mr X's current pension provider.
 - Cover any charges and/or sanctions that may be incurred as a result of the transfer.

Anthony Arter

Pensions Ombudsman
21 July 2020

Appendix A

Relevant listed charges from Curtis Banks' Schedule of Fees and Property Guide from 2016

Schedule of Fees

"There are simple standard fees for all the basic work in setting up and operating the SIPP, and there are fixed additional fees for the main items of extra work which may apply at some stage. By looking at the standard and additional fees listed below, you should be able to form a clear picture of the costs of a SIPP which will meet your needs, and be able to compare costs with other pension products."

Annual fee £245 (The annual fee is increased by £305 if the SIPP contains more than bank accounts and a simple investment portfolio with paperless transactions. [...] An additional fee of £100 p.a. applies for SIPPs which do not have a regulated financial adviser.)

Additional Fees

Property Transactions – payable upon completion of transaction

Basic cost for property/land purchase or transfer in

- One member - £750
- Shared ownership – each additional member £150
- Plus if property is bought with borrowing £250
- Registering a property for VAT £150 per property
- Property sale or transfer out £600
- Property purchased/sold using non-panel solicitor £200 per property

Annual Administration Charges – payable annually in advance

- Property/land fee
 - Land – one member £375 p.a.
 - Property – one member £475 p.a.
 - Shared ownership – each additional member £150 p.a.
- Additional fee for second and each subsequent tenant £300 p.a. per tenant
- Additional fee if there is borrowing £150 p.a. per borrower
- Additional fee if insurance is not via block policy £200 p.a. per property
- Making quarterly VAT returns £200 p.a. per property

Additional Property Fees

The above annual fees are for standard services and further fixed fees will apply for additional items of administration. Details of work covered by the standard service and the additional services for which we will provide a fee quote are set out in our Property Guide.

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Where the transaction is particularly complex, fees calculated on a time costed basis will apply.

Property Guide

“7. Insuring the property

It is important that the property is always appropriately insured to ensure that both your pension investment and us, as the legal owner of the property are adequately protected.

We have arranged a block insurance policy and it is our normal practice to insure the property via this policy. [...]

All policies are regularly reviewed to ensure these maintain the widest levels of cover at competitive premiums. You can arrange insurance via a broker of your choice but as it is held within a pension scheme we are responsible for it. We will need to review and agree the policy wording and assess the proposed level of cover and the associated exclusion clauses in order to confirm that all of the pension scheme requirements have been met. There will be an additional charge of £200 for this work.

Notes: we will retain any commission we are paid in respect of the block insurance policy. This is to cover Curtis Bank’s administration costs involved in arranging the insurance.”

Appendix B**Charges applied to the SIPP from 1 October 2016 to 6 July 2018**

1 Dec 2016 -	Annual administration fee – Full SIPP	£550
	Annual Fee for Unadvised Client Service	£100
	VAT (20%)	£130
20 Dec 2016 -	Annual Property Administration Fee - Property	£197.92
	VAT (20%)	£39.58
	Annual Property Administration Fee – Land	£156.25
	VAT (20%)	£31.25
	Annual Property Administration Fee – Property	£197.92
	VAT (20%)	£39.58
1 May 2017 -	Annual Property Administration Fee – Property	£475
	VAT (20%)	£95
	Annual Property Administration Fee – Land	£375
	VAT (20%)	£75
	Annual Property Administration Fee – Property	£475
	VAT (20%)	£95
8 Nov 2017 -	Property Sale	£600
	Non-Panel Solicitor Fee	£200
	VAT (20%)	£160
21 Nov 2017 -	Annual Non-Block Insurance Fee	£200
	VAT (20%)	£40
	Annual Non-Block Insurance Fee	£200
	VAT (20%)	£40
	Annual Non-Block Insurance Fee	£200
	VAT (20%)	£40
1 Dec 2017 -	Annual Administration Fee – Full SIPP	£550
	Annual Fee for Unadvised Client Service	£100

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1 Dec 2017 -	VAT (20%)	£130
1 May 2018 -	Annual Property Administration Fee – Property	£475
	Annual Non-Block Insurance Fee	£200
	VAT (20%)	£135
	Annual Property Administration Fee – Property	£475
	Annual Non-Block Insurance Fee	£200
	VAT (20%)	£135
	Annual Property Administration Fee – Land	£375
	Annual Non-Block Insurance Fee	£200
	VAT (20%)	£115
28 Jun 2018 -	Property Sale	£600
	Non-Panel Solicitor Fee	£200
	VAT (20%)	£160
6 Jul 2018 -	Scheme Closure	£250
	VAT (20%)	£50
Total:		£9,062.50

Appendix C

Charges applied to the SIPP from May 2010 to 30 September 2016

24 May 2010 -	SIPP Establishment and Annual Administration	£1,099.25
16 Oct 2010 -	Scheme Fees	£522.88
25 Mar 2011 -	Scheme Fees	£614
8 Feb 2012 -	Scheme Fees	£774
4 Dec 2012 -	Scheme Fees	£781.20
3 Dec 2013 -	Scheme Fees	£788.40
9 Dec 2014 -	Scheme Fees	£788.40
9 Dec 2015 -	Scheme Fees	£774
Total:		£6,142.13

Appendix D

The SIPP applicable terms and conditions

18 Fees, charges and expenses of your SIPP

- 18.1 The fees and charges payable to us in respect of your SIPP are set out in the schedule of fees.
- 18.2 We may increase our fees in line with the increase to the Average Weekly Earnings (AWE) or equivalent successor index, rounded to the nearest £1. If we do not increase a fee in any year, we may base the next increase on the change to the AWE since the last increase in that fee.
- 18.3 We may make other increases or changes to our fees by amending these terms.
- 18.4 We will also be entitled to charge the following costs to your SIPP:
- a. all expenses incurred by us or the trustee (including claims, losses and liabilities) in acquiring, holding, disposing of, transferring or valuing any investment or other asset of your SIPP;
 - b. all fees, commissions, charges, disbursements (for example, stamp duty land tax or equivalent taxes and land registry fees) and other costs charged by any investment manager, nominee, banker, custodian, third party professional, mortgagee or anyone else providing related services or any agent (including any financial adviser) appointed in relation to your SIPP or any part of your SIPP;
 - c. all taxes, duties, levies or other liabilities to which we or the trustee become responsible for as a result of purchasing, holding, disposing of or transferring any investment or other asset allocated to your SIPP;
 - d. any other liabilities or scheme sanction charges payable or tax refunds due;
 - e. any amounts returned to you or to HMRC;
 - f. any taxes, duties or levies (including VAT) in respect of fees, charges or costs or amounts to which we or the trustee become responsible for as described in this paragraph; and
 - g. any administrative costs incurred by us or the trustee (including legal expenses, disbursements or other costs) in complying with any court orders served on us and/or the trustee relating to you, your SIPP or investments relating to your SIPP.
- 18.5 If we or the trustee are required to:
- a. pay any tax or levies imposed on your SIPP or on any contribution paid or monies allocated in respect of it; or
 - b. make any other payment to the UK Government, any governmental agency or regulator or self-regulatory organisation of which we are or become a member, to the extent directly attributable to your SIPP, we may reimburse ourselves in respect of the levy, tax, liability, charges or other payment by way of making a charge to your SIPP as we may reasonably determine. This will be on a basis similar to how the levy, tax, liability, charge or other payment has been calculated.
- 18.6 Paragraphs 18.4 and 18.5 will not apply to the extent that the relevant costs and event is attributable, directly or indirectly, to any fraud, negligence, wilful default or

breach of regulatory duty on the part of any member of the Curtis Banks Group or any of their employees or agents.

- 18.7 We will sell investments where necessary in order to generate funds to pay our fees. Investments will be sold in line with the "Order of Disposal Policy" in force at the time of sale. We will sell investments to cover scheme charges from us, your financial adviser and to maintain a sufficient balance within the SIPP account.
- 18.8 If for any reason the value of the investments held in respect of your SIPP is insufficient to meet any such costs or liabilities or scheme sanction charges payable or tax refunds due, you agree to pay to us on demand the amount of any such shortfall.
- 18.9 We will continue to be entitled to our charges and to recover all costs and liabilities associated with your SIPP (including any such charges falling due and any such costs and liabilities incurred after your death) until all the assets of your SIPP, including the amount represented by the balance in your SIPP bank account records, have been transferred out of your SIPP in accordance with these terms.