

Ombudsman's Determination

Applicant	Mr T
Scheme	GPC Self Invested Personal Pension (the SIPP)
Respondent	Hartley Pensions (Hartley)

Outcome

1. I do not uphold Mr T's complaint and no further action is required by Hartley.

Complaint Summary

1. Mr T complains that:-
 - The Harlequin Two Rivers (**HTR**) investment held in the SIPP has a nominal value of £1.
 - He has not been able to close the SIPP.
 - Annual Management Charges (**AMC**) increased since the inception of the SIPP and he wants these to be refunded.

Background information, including submissions from the parties

2. On 7 December 2009, Mr T signed an application form (**the Application Form**) to open a SIPP with Guardian Pension Consultants Ltd (**Guardian**) which stated that:-

“by signing the application form I hereby agree to the fees as outlined as per the current fee schedule or as agreed with Guardian/my adviser. I understand that these may be changed from time to time”.
3. Mr T invested in the HTR project. HTR was a pooled, non-standard investment (**NSI**) between many investors that intended to develop holiday properties for rental in the Caribbean as part of the larger legal group, Harlequin SVG.
4. In April 2016, Guardian introduced a new AMC structure for investors that held NSIs in SIPPs.

5. In October 2016, Harlequin Property SVG entered insolvency proceedings. At this point Mr T's HTR properties had not been built. However, HTR did not automatically enter insolvency like some of the other Harlequin SVG developments.
6. On 15 December 2017, Mr T emailed Guardian saying that it had doubled the AMC since he had opened the SIPP. Mr T asked for Guardian to refund any AMC over the amount he agreed at the SIPP's inception because he considered the revised amount to be excessive.
7. The same day, Guardian responded to Mr T's complaint and its response is summarised below:-
 - The additional work Guardian undertook on administering SIPPs carried considerable costs to it as a company as a result of new statutory duties and Mr T's illiquid NSI.
 - The work it undertook was greater when an investment was distressed.
 - Guardian reserved the right to increase the AMC in accordance with the terms of the Application Form and after providing members with three months written notice.
 - Unless the HTR investment became insolvent, the SIPP must remain open because it was a live asset and some prospect of recovery still existed. Guardian can only close the SIPP after it receives official documentation that HTR has ceased trading.
8. On 17 January 2018, the Financial Services Compensation Scheme (**FSCS**) provided an update to SIPP owners who invested with Harlequin SVG. The FSCS said that HTR investments must stay live and had a notional value to comply with legislation and HMRC tax rules. It also said that SIPP providers reserved the right to charge AMC.
9. On 16 April 2018, the FSCS issued a further update maintaining the same position.
10. On 11 June 2019, Guardian went into administration. The SIPP was operated as normal until a buyer was found for its book of business.
11. On 13 August 2019, Hartley Pensions Limited (**Hartley**) bought Guardian's business.

Adjudicator's Opinion

12. Mr T's complaint was considered by one of our Adjudicators who concluded that no further action was required by Hartley. The Adjudicator's findings are summarised below:-
 - The Adjudicator appreciated the reasons why Mr T believes that the SIPP should be closed. However, the HTR investment is only distressed and not insolvent. In these circumstances, the SIPP must stay open while there may be some prospect of recovering money from the HTR investment.

- Under HMRC regulations, Hartley is required to ascribe the HTR investment a notional value for reporting purposes while it continues to administer the SIPP. It is not possible for Hartley to accurately value Mr T's HTR investment while it is distressed. In the circumstances, Hartley's valuation of the HTR investment at £1 is in accordance with HMRC Regulations.
 - The AMC has increased greatly since the SIPP was opened and Mr T believes that this is unfair. However, Hartley says that this is caused, in part, by the increased administrative burden of managing illiquid NSIs such as HTR. In the Adjudicator's opinion, it was not foreseeable at the SIPP's inception that the HTR investment would become illiquid or that Hartley would require significant independent, professional advice in order to manage the SIPP.
 - The Application Form states that Hartley is entitled to charge an AMC and increase it, subject to providing Mr T with three months written notice. The Adjudicator had seen no evidence to suggest that Hartley (or Guardian before it) has not abided by these terms.
 - The Adjudicator sympathised with the position in which Mr T finds himself. However, Hartley is acting in accordance with the terms and conditions stipulated in the Application Form that Mr T agreed to at the SIPP's inception.
13. Mr T did not accept the Adjudicator's Opinion 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

14. Mr T says that he was mis-advised from the start about the HTR investment and he is charged AMC by Hartley for services that he does not want. I appreciate the reasons why Mr T wants the SIPP to be closed. At the date of this Determination, the Bankruptcy Trustee of Harlequin SVG remains unable to "present an estimated outcome statement (for the Estate)...due to continuing material uncertainty around potential recoveries". Consequently, the HTR investment remains active and I agree with the Adjudicator that the SIPP cannot be closed while this continues to be the case. A copy of the October 2019 Bankruptcy Estate Trustee's update to investors is provided in the Appendix.
15. I agree with the Adjudicator's view that day-to-day administration of the SIPP is still required (such as reporting to HMRC) even though the HTR investment is distressed. Hartley is obliged to provide information to HMRC in order to comply with its duties as an Administrator of a pension scheme, notwithstanding any additional duties imposed upon Administrators dealing with NSIs in SIPPs.
16. I acknowledge that the AMC has increased significantly since 2009. I also appreciate why Mr T considers the increase to be inequitable under the circumstances. The rate

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the AMC is set at is purely a commercial decision for Hartley and not stipulated in the Application Form. I have considerable sympathy with the difficult position in which Mr T finds himself. However, in accordance with the terms of the Application Form, Mr T is liable to pay the AMC at the rate determined by Hartley.

17. I do not uphold Mr T's complaint.

Anthony Arter

Pensions Ombudsman
14 November 2019

Appendix

1. Update to Creditors of 17 October 2019, The Bankruptcy Estate of Harlequin Property (SVG) Limited.