

Ombudsman's Determination

Applicant	Mr T
Scheme	Guardian 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

2. Mr T's complaint is that:-
 - Hartley has put a nominal value of £1 on the Harlequin investment held in the SIPP.
 - Hartley has not been able to close the SIPP as Mr T requested.
 - Hartley continues to charge Mr T Annual Management Charges (**AMC**) which has increased since the inception of the SIPP and he wants that AMC to be refunded.

Background information, including submissions from the parties

3. On 5 January 2011, Mr T signed an application form (**the Application Form**) to open the SIPP with Guardian Pension Consultants Ltd (**Guardian**) which stated that:-

“As a potential member and trustee of The Guardian SIPP, 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”.
4. Mr T invested in the Harlequin project. Harlequin 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.
5. In April 2016, Guardian introduced a new AMC structure for investors that held NSIs in SIPPs.

6. In October 2016, Harlequin Property SVG entered insolvency proceedings. At this point Mr T's Harlequin properties had not been built. However, Mr T's investment did not automatically enter insolvency like some of the other Harlequin SVG developments.
7. On 20 December 2017, Mr T complained to Guardian that it had invoiced him for an AMC of over £800 for that year and that he considered this to be excessive. Mr T also said that he had asked for the SIPP to be closed many times and for a breakdown of the work that Guardian charged him for.
8. On 7 January 2018, Guardian responded to Mr T's complaint and said that:-
 - Unless Mr T's Harlequin 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 the Harlequin investment has ceased trading.
 - Mr T was compensated by the Financial Services Compensation Scheme (**FSCS**) in respect of the financial advice he received. One feature of the FSCS compensation agreement was that Mr T agreed not to take any action that would compromise the FSCS's ability to reclaim money from Harlequin SVG (by closing the SIPP or waiving his rights to the investment).
 - The additional work Guardian undertook on administering SIPPs with distressed NSIs carried considerable costs to it as a company.
 - Guardian considered its AMC to be broadly in line with its competitors.
 - Guardian reserved the right to increase the AMC in accordance with the terms of the Application Form and after providing members with prior, written notice.
9. On 17 January 2018, the FSCS provided an update to SIPP owners who invested with Harlequin SVG. The FSCS said that Harlequin investments must stay live and have a notional value to comply with legislation and HMRC tax rules. It also said that SIPP providers reserved the right to charge an AMC for administration.
10. On 16 April 2018, the FSCS issued a further update maintaining the same position.
11. On 11 June 2019, Guardian went into administration. The SIPP was operated as normal until a buyer was found for its book of business.
12. On 13 August 2019, Hartley Pensions Limited (**Hartley**) bought Guardian's business.

Adjudicator's Opinion

13. 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:-

- Under HMRC regulations, Hartley is required to ascribe the Harlequin 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 Harlequin investment while it is distressed. In the circumstances, the Adjudicator considered that Hartley's valuation of the Harlequin investment at £1 to be in accordance with HMRC regulations.
 - The Adjudicator appreciated the reasons why Mr T believes that the SIPP should be closed. However, the Harlequin investment is distressed and not insolvent. In these circumstances, the SIPP must stay open while there may be some prospect of it realising some value. Furthermore, the terms of Mr T's FSCS compensation agreement currently prohibit him from taking any action that would compromise the FSCS's ability to recover money from Harlequin SVG in the future.
 - 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 Harlequin. It was not foreseeable when the SIPP opened that the Harlequin investment would become illiquid or that Guardian (later 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 prior, written notice.
 - The Adjudicator had not seen any evidence to suggest that Hartley (or GPC 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.
14. 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

15. Mr T says that his financial adviser acted fraudulently, and its fees were added to the AMC by Guardian after it became insolvent. Mr T also says that Guardian's owner took a £1,000,000 dividend, prior to its insolvency. These matters are outside my jurisdiction to consider so I will not comment on them further. Any claim that the owners of Guardian acted improperly should be made to the Financial Conduct Authority (**FCA**) or The Pensions Regulator (**TPR**) and not by a submission to my Office.
16. One factor of Mr T's FSCS compensation agreement is that the SIPP must stay open while the investments remain active and the FSCS has some prospect of recovering

funds from Harlequin SVG. 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 Harlequin investment remains active and the SIPP cannot be closed. A copy of the October 2019 Bankruptcy Estate Trustee’s update to investors is provided in the Appendix

17. Mr T believes that the Harlequin investment is “worthless” and that Hartley (and Guardian before it) does no work to administer the SIPP due to the Harlequin investment being distressed. I agree with the Adjudicator’s view that administration of the SIPP is still required (such as reporting to HMRC) even though the Harlequin investment is distressed. Hartley is obliged to provide information to HMRC in order to comply with its duties as an Administrator, notwithstanding any additional duties imposed to Administrators dealing with NSIs in SIPPs.
18. I appreciate that Mr T wishes to be compensated for the failure of his Harlequin investment and to be refunded the SIPP’s AMC. I agree with the Adjudicator’s view that Hartley is entitled to charge Mr T an AMC for the SIPP’s administration while the Harlequin investment remains active. I acknowledge that the AMC has increased dramatically since 2011. I also appreciate why Mr T considers the increase to be inequitable under the circumstances. The rate 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.
19. I do not uphold Mr T’s complaint.

Anthony Arter

Pensions Ombudsman
14 November 2019