

Ombudsman's Determination

Applicant	Mr N
Scheme	Hornbuckle Flexible Pension Plan (the Plan)
Respondent	Hornbuckle Mitchell (HM)

Complaint summary

1. Mr N's complaint is summarised as follows:
 - HM told him he would receive a return of GBP £6,238.00 from his investment in the "USD Absolute Macro Diversified Fund" (**Absolute Fund**). When his funds were disinvested, he actually received an uncrystallised funds pension lump sum (**UFPLS**) of GBP £3,376.75. He believes that HM's explanation of this difference is inadequate and he is entitled to the shortfall.
 - HM did not provide annual statements and so he was unable to monitor the value of the funds.
 - He was unaware of any fees until he received a letter from HM, dated 10 July 2015, which provided details and the service was poor. As a result of this, he considers HM should refund a proportion of the fees.

Summary of the Ombudsman's Determination and reasons

2. The complaint should be partly upheld against HM because it did not carry out sufficient reconciliation checks when receiving proceeds of liquidation from the Absolute Fund. I do not uphold the rest of the complaint.
3. My reasons for reaching this view are explained in more detail below.

Material facts

4. The Plan is a SIPP established under Trust and Mr N applied to become a member on 26 February 2007.
5. The Absolute Fund was an investment taken out by the trustees on Mr N's behalf in February 2009. It was a US dollar (**USD**) fund. The terms of the subscription

agreement were couched in USD but transactions were sometimes denominated in sterling (**GBP**). For example, the minimum subscription was described as US\$25,000. However, the investment sum inserted into the agreement by hand in the space following the typed US\$ was “GBP £9,827.5”. Similarly, the mandate which HM issued to its bank on 26 February 2009 gave instructions quantified in GBP in relation to a transaction which was actually to take place in USD, i.e. “to transfer £9,827.50 in USD.”

6. On 16 March 2015, due to the reduction in the value of the Plan funds, and following the liquidation of the Absolute Fund, Mr N decided to disinvest the assets.
7. On 21 April 2015, HM made a telephone call to the liquidator of the fund, Krys Global VL Services Limited (**Krys**) to confirm the amount which Mr N could expect to receive from the proceeds of liquidation. An employee of Krys made a note of the conversation which reads, “the amount to be paid out to the member will be £6238.”
8. HM emailed Mr N the same day, providing the following quotations:
 - Absolute Fund - £6,238.00.
 - New Earth Recycling Facilities Fund (**New Earth**) - £15,432.75.
 - Premier Diversified Property Fund Exempt Trust (**Premier**) - £2,455.50.
9. Mr N gave instructions and HM proceeded to process the disinvestments. Mr N considered it was taking too long to obtain proceeds from the Absolute Fund and set deadlines. HM explained that the deadlines could not be met because they were dependent on receipt of funds from Krys.
10. On 26 May 2015, Krys remitted £3,904.46 to Mr N’s Barclays SIPP account. Although Krys had by then made it plain that its remittance would be in USD, it appears on the Barclays bank statement only as a GBP figure. The same day, HM made enquiries of Krys about the sum remitted; “Even converting USD to GBP this doesn’t tie up with what we assumed we would receive. Please confirm the difference and the date the exchange rate was used so we can verify.”
11. Krys replied, “The amount we paid was the amount quoted in our distribution letter. We don’t know the FX rate applied by your bankers as we paid the amount in USD. [The receiving bank] should be able to check what rate they applied to convert.”
12. After deduction of HM’s fees, the UFPLS payment made to Mr N in respect of the Absolute Fund on 27 May 2016 was £3,376.75.
13. Mr N complained to HM about the difference between the sum he received and the figure quoted in HM’s email of 21 April 2015. He also expressed dissatisfaction that it had taken about five weeks for HM to arrange the disinvestment of the Absolute Fund. He further complained that HM had not issued annual statements showing the value of the funds and that it had not notified him when the fund went into liquidation.

14. HM issued its final response letter on 10 July 2015. It apologised for not informing Mr N when it received the notice to shareholders on 16 February 2015, but noted that his financial adviser had known about the liquidation. HM confirmed that £3,906.46 was received from Krys on 26 March 2015 and their charges of £520 plus VAT were deducted from the Plan account. The residual balance of £3,376.75 was then paid to Mr N on 27 May 2015.
15. HM explained that it believed the amount Krys confirmed to it on 21 April 2015 was actually in USD, not GBP.
16. Turning to Mr N's complaint about timeliness, HM noted that on 9 April 2015, it had notified him that it would process the sale of the New Earth and Premier funds immediately and keep him updated with regard to the disinvestment of the Absolute Fund. HM explained that it was reliant on Krys to release the monies. HM apologised for not having explained this at the outset but noted that it had kept Mr N updated on the progress of arranging the disinvestment.
17. With regard to Mr N's complaint that it had not issued annual statements, HM said that these had been sent to his financial adviser, who should have forwarded them to him.
18. Mr N was dissatisfied with this response and referred the complaint to our Service. He queried HM's explanation for the discrepancy between the quotation given on 21 April 2015 and what was received. He questioned in particular whether the explanation is supported by items shown on disclosed bank statements.
19. On 7 January 2016, HM explained how it had calculated the UFPLS paid to Mr N as follows:
 - £3,906.46 value of investment
 - £220.29 cash in pension scheme account
 - **Total pension fund value £4,126.75**
 - Less deductions:
 - £270 pension payment and calculations fee
 - £480 aged debt
 - **Total to be deducted £750**
 - **Final payment to member £3,376.75.**
20. The £15 was a charge reimbursed on 12 June 2015 via internal credit.

21. HM says the credit which reached the Plan bank account was £3,906.46. This was the final distribution payment from the Absolute Fund, and Mr N has suffered no loss, since this payment was used for the UFPLS payment.
22. HM says the statement that £6,238.00 would be returned to the Plan bank account was a typing error. It was clear that the fund was in USD. HM said Krys had confirmed that the amount returned was the amount quoted (in USD). It could not tell with precision which day the funds cleared and which day the foreign exchange had taken place, but it could see from correspondence that the return was not made until after 15 May 2015. Using Barclays' published exchange rate for a range of dates between 18 and 26 May 2015, HM had ascertained that the discrepancy between 6238 USD and what was returned in GBP amounted to between £70 and £150. It was reasonable to expect that the bank would have levied some charges on the foreign exchange transaction, however Barclays would not confirm those details.
23. HM says it is not its standard practice to list fees and charges in benefit statements. These are clearly listed in fees schedules. It is reasonable to expect the member to have viewed the fee structure before confirming transactional requests. HM says it sent statements to the address listed on the application form.

Summary of Mr N's position

24. The figure HM referred to in its email of 21 April 2015, in respect of the Absolute Fund, was definitive and not indicative, and so he should have received £6,238.00.
25. HM has not provided an adequate explanation of the difference between the quotation and the money he received.
26. HM did not keep him updated with developments affecting the value of the funds, for example by providing annual statements.
27. HM did not notify him when the funds fell into liquidation. He says that, if HM had done this, he may have been able to transfer the funds to another provider and thereby avoid the reduction in the value of the funds.
28. He wants HM to reimburse all the fees it has charged, on the basis that he considers it failed in its duty of responsibility to keep him informed and fully apprised with regard to the funds. He says he was unaware of any charges or fees until he received a letter from HM dated 10 July 2015, which provided details of the fees.
29. HM delayed unreasonably in disinvesting the Absolute Fund.

Summary of HM's position

30. The annual renewal valuations that were sent to Mr N show that the Absolute Fund is in USD and not GBP. It apologised for the error contained in its email of 21 April 2015.

31. It is unable to control processing times by a third party and it made the funds available to Mr N on the day Krys returned them into the Plan's bank account.
32. All of its fees are listed clearly in its fee schedules. In addition, it has altered its fee structure in recent years and accordingly, in December 2013 and March 2015, it issued letters notifying Mr N of these changes.
33. It cannot now obtain any more information from the bank, so cannot ascertain the transaction date, the precise exchange rate used, or the bank charges levied on the exchange.

Conclusions

34. Mr N considers that it was negligent of HM to allow the figure for the Absolute Fund to go out unchecked and that it was unacceptable that the error went unnoticed until the distribution payment of £3,904.46 was received. He says he had no reason to doubt what he was told because although it was clearly a USD fund, other transactions had been conducted in GBP.
35. I find it highly likely that the return figure quoted by Krys was in USD and HM issued an incorrect quotation for the Absolute Fund in GBP in error. That was maladministration, but of itself, the misinformation does not entitle Mr N to the amount quoted in GBP. Mr N was entitled to the return of proceeds from the USD fund in liquidation, whatever that was. There is no evidence that Mr N made any irreversible financial commitments in reliance on the incorrect information provided to him. I therefore conclude he cannot prove any financial loss as a result. What he suffered was a loss of expectation.
36. Turning to the timing issue, I can see no unreasonable delay on the part of HM. The chronology shows that the timing of the transaction was driven by the requirements of the fund liquidator. I am satisfied that HM liaised with Krys regularly and provided Mr N with updates, including telling him that deadlines which he was seeking to impose could not be met and why. Taking into consideration that it was relying on Krys to release the proceeds of liquidation, I am satisfied HM took sufficient action to progress the disinvestment. While I appreciate that HM did not inform Mr N when the Plan went into liquidation, I cannot see evidence that this affected his decision to disinvest, the amount which was returned or the speed with which it was possible to access it.
37. Mr N has complained that he had to send emails and letters and make a number of telephone calls in relation to the transaction. I accept that he did so. However, from the chronology, it appears that these were caused by Krys's identity checks and Mr N's efforts to speed the transaction up rather than as a result of the misinformation.

38. Mr N has asked me to consider whether he should receive a refund of a proportion of HM's fees, due to poor service. He has not identified particular fees that HM levied where not due. Having reviewed the Plan's fee schedule, I note that that on page three, it says:

"The ongoing administration of your plan involves a number of activities covered by the fees included here. Those activities are:

routine administration processes required to maintain the plan;

our joint regulatory reporting responsibilities;

the preparation and delivery of regular valuation reporting on your plan;

banking and reconciliations for your plan;

technical guidance on the day to day running of the SIPP and the acceptability/permissibility of the investments (limited to initial guidance on whether you should go through the full evaluation process);

legislative and regulatory changes required to sustain the plan;

full activity tracking and risk monitoring."

39. I can see no basis to conclude that fees were levied to which HM was not contractually entitled.
40. Nevertheless, HM's provision of misinformation about the amount to be returned from the Absolute Fund and the failure to correct it until after the money was received was maladministration.
41. Furthermore, HM appears to have had no system in place for checking the accuracy of what was received against what was due. Krys' distribution letter was in general terms and did not identify what was due to Mr N. HM consequently has no record of the USD sum paid, the exchange rate used, or the bank charges levied and has subsequently been unable to reconstruct the transaction. If HM is going to operate USD funds, it needs to have adequate contemporaneous reconciliation processes in place. Mr N has had to file a complaint in order to get any reconciliation checks done and although they support the conclusion that the discrepancy is generally due to a mistake about the currency being quoted, they are still inconclusive about what exactly was paid and how much it cost to get it paid. Overall, I am persuaded that the handling of the foreign exchange aspects of the transaction constituted maladministration, causing significant distress and inconvenience.
42. I appreciate HM has offered Mr N compensation of £100 in recognition of the loss of expectation he suffered as a result of the error concerning the Absolute Fund quotation contained in its email of 21 April 2015. However, in my judgment, this is not sufficient to compensate him for the distress and inconvenience caused by the maladministration identified above.

Directions

43. I direct that within 28 days of the date of this Determination, HM shall pay Mr N £500 for the distress and inconvenience caused by its failure adequately to reconcile the amount due from the fund with the amount received.

Karen Johnston

Deputy Pensions Ombudsman
1 February 2017