

Ombudsman's Determination

Applicant	Mr Y
Scheme	Hornbuckle Mitchell SIPP (the SIPP)
Respondents	The Hornbuckle Mitchell Group Limited (Hornbuckle)

Outcome

1. Mr Y's complaint against Hornbuckle 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) Hornbuckle should conduct a loss assessment and also pay Mr Y £500 as compensation for the significant distress and inconvenience suffered.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr Y has complained about the administration of his SIPP. Hornbuckle incorrectly transferred the full value of a separate personal pension plan (**PPP**) into his SIPP. This caused the PPP to be closed, and while the situation was put right his funds were disinvested.
4. Mr Y has also said that Hornbuckle incorrectly handled the purchase of unlisted shares by his SIPP, causing him to be out of the market for a period of time.
5. Mr Y considers that Hornbuckle should redress any investment loss, pay his representative's costs and pay compensation for distress and inconvenience.

Background information, including submissions from the parties

6. In June 2014, Mr Y instructed Hornbuckle to transfer £60,000 from his PPP into his SIPP on an execution only basis. The intention was to fund the purchase of unlisted shares issued by his employer.
7. The funds were requested by Hornbuckle on 12 June 2014, however, instead of £60,000 being requested the full value of the PPP was requested. The transfer was put in motion and as a result Mr Y's PPP was closed by Skandia, the PPP provider. £148,001.27 was disinvested on 17 June 2014.

8. The disinvested fund was not immediately paid to Hornbuckle. The error was identified by Mr Y, who queried it with Hornbuckle. In the subsequent correspondence Hornbuckle accepted that it had made the mistake, and said it would investigate Mr Y's loss to, 'ensure that you will be put back into the exact same position you would have been if the error had not occurred.'
9. On 19 June 2014 Mr Y was informed that Skandia could not reinvest the funds without a new plan being established. Skandia said this would take nine days. Mr Y was invited to keep the funds with Skandia pending the arrangement of a replacement plan or the funds could be transferred to Hornbuckle. Mr Y agreed for the entire fund to be transferred to Hornbuckle.
10. Hornbuckle initially liaised with Skandia, but email correspondence dated 27 June 2014, shows that Hornbuckle asked Mr Y, 'Are you currently liaising with Skandia regarding the establishment of the new plan?' A follow up email was sent on 8 July 2014 asking, 'Finally, have Skandia started the process to establish the new plan for us to return the funds too[sic]?'
11. Mr Y acknowledged this the following day, confirming he would 'update you [Hornbuckle] once I know...' and Hornbuckle confirmed, 'If you are able to make me aware of the new plan number once established with them that would be helpful.'
12. On 30 July 2014 Hornbuckle confirmed to Mr Y that Skandia would no longer communicate with it on the issue.
13. In August 2014 Mr Y appointed a representative to assist with the purchase of the unlisted shares. Hornbuckle had unexpectedly placed various requirements on Mr Y before it would allow the purchase to go ahead, which prompted him to seek the assistance of a financial professional.
14. Hornbuckle noted that the shares could not exceed 50% of the value of the SIPP, Mr Y was connected to the company, and he had not been certified as a sophisticated investor. Mr Y's representative disputed the necessity of these requirements, efforts were made to meet them, but Hornbuckle changed its position shortly afterwards and agreed to accept the investment.
15. The representative confirmed his role was non-advisory, and limited to assisting with resolving the outstanding issues. The representative said he would invoice Mr Y for the cost of his services and said Hornbuckle should bear those costs in mind in light of the earlier statement to put Mr Y back into the position he should have been.
16. A complaint was made about the time taken to complete the share purchase; and the issue was resolved in October 2014. As a gesture of goodwill regarding the share purchase and service issues Hornbuckle reduced its fee by £200+VAT. Within the final response letter Hornbuckle also confirmed that the complaint concerning the Skandia transfer would be upheld.
17. The share purchase was completed on 16 December 2014.

18. In January 2015 the issue of the transferred funds was addressed and Hornbuckle attempted to establish the loss. The correspondence shows that Hornbuckle requested a letter of authority from Mr Y in order to obtain a breakdown of the PPP portfolio prior to the transfer. At this stage Hornbuckle also reiterated that, 'In previous correspondence with them they [Skandia] have indicated that a new application would have to be completed and submitted by yourself to establish the new plan.'
19. A provisional loss assessment was calculated by Hornbuckle on receipt of the information from Skandia in March 2015. It concluded that the loss up to that date was £4,523.39.
20. This was refuted by Mr Y's representative who calculated the loss to be £21,475.03. The representative also added that his invoice, up to that point, stood at 'just over £1,500 and will obviously continue to increase until settlement is reached.' The representative also confirmed that they would be charging 1% of the portfolio value for the arrangement of the new plan, and added, 'I know [Mr Y] considers that you should also take these costs into account and my understanding is that he has discussed this with you in the context of him "not being out of pocket"...'
21. Further details of the representative's calculations were submitted to Hornbuckle on 26 March 2015. This confirmed that the costs were continuing to rise and highlighted the stress suffered by Mr Y. The representative reiterated that Hornbuckle had clearly said that Mr Y would not be left out of pocket.
22. In May 2015 Mr Y wrote to Hornbuckle querying the length of time the process was taking, why Hornbuckle had not organised the new Skandia account and why an earlier offer was now being revised?
23. On further review Hornbuckle recalculated the loss and a formal offer of £425.04 for investment loss was made to Mr Y on 18 June 2015. This was calculated on the basis of the funds being out of the market between 17 and 24 June 2014. In addition, a distress and inconvenience payment of £100 was offered.
24. A final response letter was issued on 3 August 2015 upholding the complaint in part. Hornbuckle reiterated that the offer of 18 June 2015 was correct, but that it would increase the compensation for distress and inconvenience to £500. Additionally, it acknowledged that a cost would be incurred for a replacement of the Skandia PPP, and agreed to pay that cost. It declined to pay the costs invoiced by the representative.
25. In February 2016 Mr Y's representative, acting in an advisory capacity, arranged for a Skandia investment account to be held within the SIPP and the funds that had not been used in the share purchase were invested via that arrangement.

Adjudicator's Opinion

26. Mr Y's complaint was considered by one of our Adjudicators who concluded that further action was required by Hornbuckle. The Adjudicator's findings are summarised briefly below.
- The amount transferred was an error on Hornbuckle's part. It had stated that it would put the matter right, but after an initial phase during which Hornbuckle attempted to do this, the onus switched to Mr Y to arrange an alternative plan for the funds to be invested.
 - Mr Y did not act to mitigate his loss for a considerable period of time. Hornbuckle tried to reverse the error, but it came to a point where it could do no more without a specific action by Mr Y. As such, responsibility for any investment loss from that point onwards should fall to Mr Y. The Adjudicator considered Hornbuckle's liability extended from 17 June 2014 to 10 August 2014, the point at which it could have done no more without action taken by Mr Y.
 - The Adjudicator considered that Hornbuckle acted reasonably when refusing the share purchase instruction. This was a legitimate decision within the conditions of the SIPP. It was also reasonable for it to waive this requirement at its discretion, which it later did.
 - Significant distress and inconvenience had been caused to Mr Y, and £500 was appropriate in the circumstances.
 - The costs claimed for were not reasonable and free alternatives to this were available to Mr Y. Hornbuckle had met the cost of arranging the new plan and that was appropriate in the circumstances.
27. Hornbuckle accepted the Adjudicator's Opinion but Mr Y did not, so the complaint was passed to me to consider. Mr Y provided further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr Y for completeness.

Ombudsman's decision

28. Mr Y considers that it was appropriate for him to appoint a representative to assist him and that the costs associated with this should be borne by Hornbuckle. It is only on very rare occasions that I will award costs, and I am satisfied that the matter Mr Y raised could have been resolved with the free assistance of The Pensions Advisory Service. It was his decision to appoint the representative and he accepted the costs it would entail. Notwithstanding this, I have seen no evidence that an invoice has been issued or that any costs have been paid by Mr Y. In the circumstances it is not appropriate for me to award costs to Mr Y.

29. Mr Y understands that Hornbuckle was aware of the unit values at disinvestment, and the funds disinvested shortly after the erroneous transfer went through. He asserts that as a result it should not have taken as long as it did for the redress to be finalised as Hornbuckle had all the information to hand from an early stage. Mr Y has provided a document which indicates that Hornbuckle did receive this information but Hornbuckle has no record of it.
30. In my view the evidence shows that Hornbuckle was not in receipt of the disinvestment statement. It is clear that following the transfer Hornbuckle made genuine attempts to confirm these details from Skandia. It would seem very odd for Hornbuckle to delay the process if it had the information to hand. Additionally, there is evidence that Hornbuckle asked Mr Y for the information held by him, but he did not provide it. In the circumstances, in my view, Hornbuckle was unaware of the disinvestment details and so, as the Adjudicator concluded, it was at an impasse.
31. Notwithstanding this, even if Hornbuckle was aware of the contents of the disinvestment statement it does not mean it was in a position to invest Mr Y's funds as per his previous arrangement. The onus was on Mr Y to facilitate the reinvestment by arranging a new plan. This was confirmed in correspondence from June and July 2014. In the circumstances, assuming Hornbuckle had access to the information, it could have quantified the loss by August 2014, but the onus would still have been on Mr Y to mitigate any further loss by arranging an alternative plan to receive the quantified sum.
32. Therefore, I uphold Mr Y's complaint but only to the extent set out by the Adjudicator.

Directions

33. Within 28 days Hornbuckle will undertake a loss assessment for the period of 17 June 2014 to 10 August 2014, and will pay Mr Y £500 for the significant distress and inconvenience caused.

Anthony Arter

Pensions Ombudsman
28 February 2017