

Ombudsman's Determination

Applicant	Mr D
Scheme	Curtis Banks SIPP
Respondent	Curtis Banks Limited (Curtis Banks)

Outcome

1. Mr D's complaint is upheld and, to put matters right, Curtis Banks should provide redress on the terms set out in its offer to this Office and send Mr D summary statements showing the monetary effect of the redress. Curtis Banks should also pay Mr D £750 for the significant distress and inconvenience he has experienced.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr D has complained that Curtis Banks has provided an incorrect valuation in relation to his ex-wife's Self-Invested Personal Pension (**SIPP**). The valuation was required for a pension sharing order (**PSO**) following Mr and Mrs D's divorce.

Background information, including submissions from the parties

4. Mr and Mrs D each have a SIPP which is provided and administered by Curtis Banks.
5. Mrs D's SIPP contains a share in a commercial property which is subject to a mortgage.
6. The commercial property which is central to this complaint is owned, in varying proportions, by a syndicate comprised of other members of Mr D's family including him and his now ex-wife. There are other administrative problems, relating to how rent and charges have been apportioned, which affect all members of the syndicate. Although these problems do not form part of this Determination, they are mentioned here to provide context to the background of this complaint.
7. In 2014, Mr and Mrs D started divorce proceedings.
8. On 5 November 2014, Mrs D's solicitor asked Curtis Banks for a valuation of her SIPP. This was in anticipation of the preparation of a PSO.

9. On 18 November 2014, Curtis Banks provided a valuation of £4,076.91. However Curtis Banks explained that this figure was not guaranteed and was subject to change. Curtis Banks' email said: -

“This value is not guaranteed to remain the same as the value of our clients' SIPP's are not usually worked out until the day of transfer, this is due to fluctuations in the markets and any applicable fees to be taken into account.”
10. However, in reality the SIPP had accrued annual fees, which had been unpaid since 2010. The fees amounted to £5,136.25 and had not been accounted for in the valuation Curtis Banks provided.
11. On 18 December 2014, the Court issued a PSO awarding Mr D 100% of the value of Mrs D's SIPP.
12. In May 2015, Curtis Banks tried to implement the PSO, however it was unable to as the SIPP had a net asset value of -£1,358.81. On this occasion, when calculating the net asset value, Curtis Banks had accounted for the accrued annual fees of £5,136.25 as well as a fee of £600 which was applied for the work involved in dealing with the PSO.

Summary of Mr D's position

13. Mr D is unhappy because fees remain outstanding, for which his ex-wife, rather than he is responsible. As a consequence, Mr D is not able to transfer the assets from Mrs D's SIPP into his own SIPP in accordance with the PSO.
14. In view of the other administrative problems affecting the syndicated property, Mr D requested comprehensive 'before' and 'after' statements detailing the transactions that should have taken place had it not been for Curtis Banks' error, to compare with the monetary effect of the offer Curtis Banks had made.

Summary of Curtis Banks' position

15. Curtis Banks has accepted that it should have checked for any outstanding, accrued fees before providing the indicative valuation. However Curtis Banks maintained that the figure quoted was not ever guaranteed and that the fees incurred remain rightfully owed.

Adjudicator's initial thoughts

16. Following the initial involvement of one of our Adjudicators, Curtis Banks made an offer of settlement to Mr D. In summary this was to: -
 - Write off the fees applied to Mrs D' SIPP.
 - Waive any fees applied after 2015 when the PSO should have been processed.
 - Transfer ownership of the property from Mrs D's to Mr D's SIPP at no cost to Mr D. Curtis Banks confirmed that it would waive the PSO implementation fee and that it

would stand the cost of preparing the Deed of Assignment and Declaration of Trust which would otherwise have needed paying for by Mr D.

17. The Adjudicator contacted Curtis Banks requesting that it provide confirmation of what the monetary value of Mr D's SIPP would have been had the PSO been implemented in 2015, compared with what the situation would currently be as a result of Curtis Banks' offer. Despite several reminders, Curtis Banks did not respond to the Adjudicator.

Adjudicator's Opinion

18. Mr D's complaint was considered by one of our Adjudicators who concluded that further action was required by Curtis Banks. The Adjudicator's findings are summarised briefly below: -
 - Curtis Banks has acted in maladministration by failing to check for outstanding fees before providing a SIPP valuation. This resulted in an incorrect valuation being provided to Mrs D's solicitor, which was eventually used by the Court when determining the PSO.
 - Curtis Banks ought to have been in a position to identify the outstanding fees, which had accrued over a period of four years. It is not unreasonable to assume there would be some form of arrears flag on Curtis Banks' systems which would alert Curtis Banks to the overdue fees.
 - Although the valuation Curtis Banks provided was accompanied by a disclaimer saying the final figures can change, this makes reference to fund value fluctuations and "any applicable fees". A realistic reading of the disclaimer would not bring about awareness that substantial arrears were outstanding.
 - The word "fluctuations" suggests modest changes in value, rather than an application of four years' worth of arrears resulting in a negative net asset value. Further, a reasonable interpretation of the statement, "any applicable fees" would be the fees incurred since the valuation was prepared along with any fees for implementing the PSO.
 - Curtis Banks' maladministration has resulted in a negligent misstatement and Mr D and the Courts have, in good faith, acted on the figures Curtis Banks provided. Had it not been for this misstatement it is unlikely the PSO would have been awarded on the same terms, as it is doubtful that the intention of the Court was to award Mr D a debt.
 - Curtis Banks' misstatement has caused Mr D financial detriment since he is unable to take ownership of the assets, to which he is rightfully entitled to under the PSO. Further, as a result of Curtis Banks' inaction in responding to the complaint, the strict timescales imposed by the court for implementing PSOs have been far exceeded.

- The Adjudicator accepted that Curtis Banks had, following his initial involvement, made a reasonable offer to settle the complaint. However the Adjudicator pointed out that since sharing his initial thoughts, in an attempt to mediate a resolution, Curtis Banks had caused considerable delays and had not responded to the request for a breakdown of how the offer would be calculated, despite several reminders being sent.
 - The adjudicator recommended that the complaint should be upheld and said that in addition to the offer Curtis Banks had made, it should also pay Mr D £750 for the significant distress and inconvenience he experienced as a result of the misinformation Curtis Banks provided, as well as the avoidable delays in providing adequate redress.
19. Curtis Banks did not accept the Adjudicator's Opinion, in particular the level of compensation for distress and inconvenience that had been recommended, so the complaint was passed to me to consider. Curtis Banks provided its 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 Curtis Banks for completeness.

Ombudsman's decision

20. It has not been disputed that maladministration has occurred. What remains for me to decide is whether Curtis Banks has provided adequate redress.
21. Given the other administrative problems affecting the syndicated property, I can understand Mr D's reluctance to accept Curtis Banks' offer without first being reassured as to what this entails. However I am satisfied that the offer Curtis Banks communicated to our Adjudicator provides suitable redress for the financial injustice Mr D has suffered as a result of Curtis Banks' negligent misstatement.
22. I have considered Curtis Banks comments that it is unable to provide the level of detail Mr D requires until the property account has been reconciled. Although I can see that this would cause some difficulty providing the comprehensive 'before' and 'after' comparisons Mr D requested, I do not agree that this prevented Curtis Banks from explaining more about the principle of its offer. In making this finding I have borne in mind that the Adjudicator said to Curtis Banks: -

"I have informed Mr D that Curtis Banks will not be able to confirm the true position of the SIPP until the property account has been reconciled. I also explained that I understand that Curtis Banks may be using in house solicitors to draft the various deeds relating to the transfer of the property, so the fact Curtis Banks is offering to stand the cost of these, will not necessarily be shown on the SIPP ledger as debit and credit entries which cancel each other out. At this stage it seems that [Mr D] simply requires confirmation of what, in monetary terms, Curtis Banks' offer entails."

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23. I can see no persuasive reason why Curtis Banks could not have provided this simple clarification.
24. Further, I agree that Curtis Banks caused an avoidable delay, of almost four months, in providing an offer of suitable redress.
25. Therefore, I uphold Mr D's complaint.

Directions

26. Curtis Banks shall, within 28 days of this Determination, commence implementation of the PSO by transferring the commercial property asset from Mrs D's SIPP to Mr D's SIPP. This should be implemented on the terms set out in Curtis Banks' offer dated 13 March 2017, that is without cost to Mr D, with the charges applied after the date the PSO should have been implemented and the arrears on Mrs D's SIPP being written off.
27. If, as a result of the PSO being implemented, any subsequent adjustment is needed to Mr D's SIPP as a consequence of the separate reconciliation work Curtis Banks is undertaking, Mr D's SIPP shall be adjusted promptly on completion of that remedial work.
28. Within 14 days of the property account being reconciled, Curtis Banks shall provide Mr D with a summary statement showing the status of the SIPP accounts, 'before' and 'after' the implementation of the PSO.
29. Curtis Banks shall also pay Mr D £750 compensation for the significant distress and inconvenience he has experienced as a result of the misinformation Curtis Banks provided, as well as the avoidable delays in providing adequate redress.

Anthony Arter

Pensions Ombudsman
23 June 2017