

The complaint

Mr Z has complained that he's been financially disadvantaged by the actions of Curtis Banks Limited in dealing with both the initial purchase, and then more recent sale, of a commercial property into and out of his Self Invested Personal Pension (SIPP).

In particular, Mr Z has said that Curtis Banks failed to ensure that, when purchased by the SIPP, the owner of the commercial property – the SIPP trustees - hadn't been recorded on the land registry. He's also said that there have been other administrative issues in the sale of the property. Combined, these issues caused delays, which Mr Z said has caused him financial harm.

What happened

In 2015, Mr Z sold a post office which he owned to his St James's Place SIPP, which was administered by Curtis Banks. Unfortunately, due to an administrative oversight, the SIPP trustees weren't registered as the new owner with the land registry. But this didn't come to light until the process for selling the post office out of the SIPP began in 2018.

Once it was realised, Curtis Banks contacted the solicitors who had originally been engaged in the transfer of the property into the SIPP – and who had been engaged by Mr Z himself - to ensure that this was done. It has said that this didn't cause any delays in the more recent sale of the property from the SIPP to a third party. But it did acknowledge that it should have checked that the correct information had been submitted to the land registry and so it offered Mr Z £100 in respect of its failings in that regard.

There were, however, further delays in processing the sale of the property, which Mr Z has said were the fault of Curtis Banks. And in order to ensure that the buyer of the property - who was also the tenant - remained interested in the purchase, he'd entered into a rent free agreement in February 2019 until the property was sold. It was those losses which Mr Z was claiming and which he said wouldn't have arisen but for the errors made by Curtis Banks.

As such, Mr Z rejected the £100 offer and referred the matter to this service.

Curtis Banks has, for its part, said that there were issues relating to the sale which were beyond its control. It said that the tenant of the property (Mr A) had changed (to Mr P) without it being notified and that, before the sale could complete, it needed to complete a lease assignment and also ensure that all outstanding rent had been paid.

It further said that there were additional issues relating to agreements over documentation, required amendments and difficulties in obtaining loan information from the lender. This all contributed to the overall delays in completion of the process.

It conceded that the transaction had taken longer than it should, but it didn't consider that it was responsible for the delays.

Our investigator considered the matter and said the following in summary:

- He agreed that Curtis Banks had failed to ensure that the trustees were registered as the owner of the SIPP. He also noted that Curtis Banks contacted the solicitors in August 2018 and that, following communication between it and the solicitors, Mr Z confirmed himself in January 2019 that the property had been successfully reregistered.
- As to the matter of the tenancy of the property, the investigator said that he'd seen the "property questionnaire" which was completed by Mr Z when originally transferring the property into the SIPP. This recorded the original tenant as Mr A, which was consistent with the information held by Curtis Banks.
- There was also further evidence, in the form of a letter confirming that the SIPP had acquired the property, that both parties understood Mr A to be the tenant.
- In conversation with the investigator, Mr Z had said that Mr A wasn't relevant and that Mr P was the leaseholder. But the investigator thought that Mr Z should have contacted Curtis Banks to ensure that the right tenant was recorded.
- In February 2019, he consented to Curtis Banks' solicitor communicating with the lender directly. Unfortunately, the lender took a while to issue a redemption statement, but the investigator felt that responsibility for the delay lay mainly with the lender.
- The investigator also noted that other concerns were raised by the buyer's solicitor relating to Mr Z's wish to add a limitation clause to the "TR1" document – which recorded the transfer of registration.

The investigator concluded that the initial correction of the land registry had taken too long to resolve – and that this was a matter for Curtis Banks and its own appointed solicitors. He thought that this should have taken no longer than one month. In respect of this, he recommended that Curtis Banks increase its payment offer to Mr Z from £100 to £400.

But he considered any delays caused by the change in tenancy, without Curtis Banks being notified of this, had been the responsibility of Mr Z, who he felt had had ample opportunity to notify Curtis Banks of the change.

With regard to Mr Z's request for compensation for the extended rent free period he'd negotiated with Mr P, the investigator concluded that this had been Mr Z's own decision and not something which Curtis Banks should be held accountable for.

Curtis Banks accepted the investigator's recommendation, but Mr Z did not. He said that he accepted to a certain extent that the rent free period was his decision, but he'd spent several thousand pounds on transferring the property in and out of the SIPP and, as he felt that Curtis Banks was the reason for most of the delays, he didn't think the proposed payment was sufficient.

As agreement hasn't been reached, the matter has been referred to me for review.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

To firstly address the matter of ensuring that the proper owner was recorded with the land registry, as with the investigator I'm of the view that this did take too long. The narrative to date has been that, as this process was running alongside the sale of the SIPP, it didn't in fact contribute to the delays in completion.

But I've noted from the chronology of what's happened here that, whilst there was fairly consistent activity between the 31 July 2018, the date on which Curtis Banks was first instructed to begin the process of disposing of the property from the SIPP, and 18 September 2018, at which point Curtis Banks sought to check the land registry issue, there was then a period of inaction on its part up to 6 December 2018, at which point it issued a chaser for confirmation.

This confirmation wasn't then received until 26 January 2019. But I can't see that any other part of the process was running alongside the issue of the land registry during that time. And I'm not certain that it even could, before the land registry issue was resolved.

After that point, the communication between the parties appears to once again have been consistent, with no obvious delays. And it was after this that the issues with the tenancy were picked up, which then took some time to resolve.

Because Curtis Banks wasn't notified of the change in tenancy, this created additional problems which needed to be resolved before the sale could proceed. Mr Z may have thought this was irrelevant, but it was a complication which nevertheless needed to be overcome.

So by not informing Curtis Banks of the change in tenancy, I think Mr Z himself contributed to the delays, but my view is that Curtis Banks was the predominant cause of delays between September 2018 and January 2019.

I therefore need to consider what would be reasonable in determining how this has, firstly, financially disadvantaged Mr Z, and secondly, whether Curtis Banks should be liable for any financial loss.

Mr Z has said that he negotiated a rent free period with the buyer of the property, who was also the tenant at the time. But the available evidence doesn't support the position that Curtis Banks was aware of this until April 2019, and that any delays which it might be causing would be exacerbating Mr Z's losses. And in the absence of that knowledge, I don't think such losses would be reasonably foreseeable by Curtis Banks.

It wasn't in my view an obvious consequence, unlike perhaps a change in the purchase price due to fluctuating market conditions. As such, I don't think that Curtis Banks could in any case fairly be held responsible for losses which it couldn't have reasonably known were being incurred.

Furthermore, by the point at which Mr Z had negotiated the rent free period, which was from February 2019, the process was in any case once again running fairly smoothly, with no additional delays incurred by Curtis Banks. So I don't think it held up the process during the period when Mr Z wasn't charging his tenant rent.

There is of course the argument that the prior delays incurred by Curtis Banks had the "knock on" effect of completion happening later than it should. But I'd only take this into consideration if the consequence of that delay was reasonably foreseeable by Curtis Banks. And for the reasons given, I don't think in this instance – where rent wasn't being paid by way of Mr Z's own choice - that it was.

Putting things right

My conclusion here is that Curtis Banks could certainly have done better, not least in resolving the issue with the land registry. I think it would have been troubling for Mr Z to have

learned that the transfer of the property into the SIPP hadn't been properly completed and that this had been outstanding for three years.

But, for the reasons given, I don't think it would be fair or reasonable to hold Curtis Banks responsible for financial losses which Mr Z may have incurred as a result of the rent free period which he negotiated with his tenant – and of which it was unaware - from February 2019 onwards.

I think that, overall, the proposed payment of £400 recommended by the investigator, and accepted by Curtis Banks, is fair and reasonable in the circumstances.

My final decision

My final decision is that Curtis Banks Limited should pay Mr Z £400.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Z to accept or reject my decision before 7 September 2020.

Philip Miller
Ombudsman