

The complaint

Mr C has complained about the fees he is being charged by Hartley Pensions Limited ("Hartley") for administering his Self-Invested Personal Pension ("SIPP").

Background

In 2018 Hartley took over the management of Mr C's SIPP from a previous pension provider that went into administration.

The businesses involved in the set up and operation of Mr C's SIPP are set out below:

Greyfriars Asset Management Ltd ("Greyfriars")

Greyfriars was a regulated SIPP operator that provided Mr C's SIPP until 2018 when it entered into administration.

Hartley Pensions Limited ("Hartley")

Hartley is a regulated SIPP operator which acquired Mr C's SIPP in October 2018 by novation when his previous provider, Greyfriars, went into administration.

Hartley SAS Limited ("Hartley SAS")

Hartley SAS is the pension scheme administrator. It conducts the day to day administration for Hartley and collects the fees from Mr C's account.

What's happened

Mr C said Hartley has collected fees for services that it hasn't provided, and it hasn't given him the level of customer service that he's entitled to expect.

Complaints were submitted to Hartley on several occasions, but in summary he said:

- A fee note in the sum of £1079.42 was raised on 28 December 2018 and that amount was collected from his SIPP in January 2019. An invoice for the fee was provided in May 2019 but it's unclear what the fee represented.
- Conflicting information was given about whether fees are due in arrears or in advance.
- Fees are being charged in excess of what was agreed with Greyfriars.
- Greyfriars were committed to providing half-yearly reports and valuations, but Hartley hasn't been doing this on time.

Hartley responded with a final response in which it said:

- The invoice of £1,079.42 related to the period between June – December 2017 and was collected late due to Greyfriars' administration.

- There were unpaid fees from December 2017 – June 2019, some of which it agreed to waive and some which would be invoiced.
- It isn't responsible for any liabilities prior to the acquisition from Greyfriars.

Mr C remained unhappy with Hartley's response and so referred the complaint to this Service for review.

One of our investigators looked into this and recommended Mr C's complaint be upheld. She set out the circumstances of Mr C's complaint and the relevant considerations to both parties and concluded that it was unfair for Hartley to have charged the fees it was. She suggested that Hartley refund the fees collected and pay £200 compensation for the trouble and upset he'd experienced for the poor service and uncertainty. Given that Mr C was unable to close the SIPP and it held so little financial value, the investigator also recommended a nominal fee of just £5 per annum moving forward.

In January 2021 Hartley confirmed that it accepted the investigator's assessment and would arrange to:

- Refund £1079.42 back to Mr C's SIPP account.
- Pay £200 compensation for trouble and upset directly to Mr C.
- Charge a reduced annual fee of £5 for the remaining illiquid assets.

Mr C also agreed to this recommendation to put things right. However, in December 2021 Hartley confirmed the refund had not been processed and assured it would be done as a matter of urgency.

In January 2022 Mr C contacted the investigator to confirm that he'd received the £200 trouble and upset payment, but unhappy the fees still hadn't been resolved. In fact, not only had the £1,079.42 not been refunded to his SIPP, a further payment for fees of £1382.40 had been collected from his SIPP in December 2021.

As no agreement could be reached, the complaint has been passed to me to review afresh and make a decision.

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.

I should start by saying that I understand Hartley is not the business that was responsible for advising on or accepting Mr C's SIPP and investments in the first place. It cannot be held responsible for any actions or fees that Mr C was charged before it took over administration of the SIPP in October 2018.

So, I have specifically reviewed Hartley's actions since that time – including the fees collected which it says relate to periods when the SIPP was administered by Greyfriars.

In reviewing the complaint, I have looked at everything afresh, and taken account of the fact that both Mr C and Hartley have already agreed to a way of resolving the complaint – albeit also acknowledging Hartley that hasn't implemented the agreed terms.

Relevant considerations

When considering what's fair and reasonable in this complaint, I consider the Financial Conduct Authority ("FCA") Principles for Businesses to be of particular relevance.

The Principles for Businesses ("PRIN") which are set out in the FCA's Handbook "are a *general statement of the fundamental obligations of firms under the regulatory system*" (PRIN 1.1.2G). In addition, in *British Bankers Association, R (on the application of) v The Financial Services Authority & Anor* [2011] EWHC 999 (Admin) (20 April 2011) Ousely J said:

"Indeed, it is my view that it would be a breach of statutory duty for the Ombudsman to reach a view on a case without taking the Principles into account in deciding what would be fair and reasonable and what redress to afford. Even if no Principles had been produced by the FSA, the FOS would find it hard to fulfil its particular statutory duty without having regard to the sort of high level principles which find expression in the Principles, whoever formulated them. They are the essence of what is fair and reasonable, subject to the argument about their relationship to specific rules" (para 77).

"...The Principles are best understood as the ever present substrata to which the specific rules are added. The Principles always have to be complied with. The specific rules do not supplant them and cannot be used to contradict them. They are but specific applications of them to the particular requirements they cover. The general notion that the specific rules can exhaust the application of the Principles is inappropriate. It cannot be an error of law for the Principles to augment specific rules" (para 162).

I consider Principle 6 to be of particular relevance:

Customers' interests – *A firm must pay due regard to the interests of its customers and treat them fairly.*

In September 2009 the FSA published a thematic review report on SIPP's which stated:

"We are very clear that SIPP operators, regardless of whether they provide advice, are bound by Principle 6 of the Principles for Businesses ('a firm must pay due regard to the interests of its customers and treat them fairly') insofar as they are obliged to ensure the fair treatment of their customers. COBS 3.2.3(2) states that a member of a pension scheme is a 'client' for COBS purposes, and 'Customer' in terms of Principle 6 includes clients..."

The context that these comments were made are in relation to the quality of the business that a SIPP operator accepts. As I've already explained, I understand that in this complaint Hartley is not responsible for the acceptance of Mr C's business, but it's clear from the FSA's comments that SIPP operators were obliged to ensure fair treatment of their customers.

So, I've carefully considered Hartley's obligation to treat its customers (and specifically Mr C) fairly when deciding what is fair and reasonable in the circumstances of this complaint.

Customer Service

Hartley accepted it had fallen short of the levels of service Mr C was entitled to expect. It agreed with the investigators recommendation and Mr C confirmed he received a payment of £200 to reflect the trouble and upset he'd experienced from the uncertainty and confusion in relation to the fees.

I've considered whether any further compensation should be paid given that the uncertainty has continued, and Hartley never actioned the agreed resolution. But overall, I'm persuaded

the £200 is a fair sum and no further payment is required in this regard. But the key issue to resolve is the outstanding position with the fees.

SIPP fees

In January 2021 Hartley had agreed to refund the fees of £1,079.42 collected for the period June – December 2017. It also agreed to charge a nominal fee of £5 moving forwards – to reflect the value in the SIPP was only around £2,000 and it held an illiquid asset valued at just £1 (ABC Bond).

I'm satisfied this agreement was fair and reasonable in the circumstances and reflects the fact Mr C cannot close the SIPP whilst it holds the illiquid investment.

However, as explained above, the refund of £1,079.42 was never processed into Mr C's SIPP account. And rather than charge £5 for the next annual fee, it collected £1,382.40. I consider this to have been unfair and unreasonable given what was already agreed with Mr C. So, I'm upholding Mr C's complaint and require Hartley to take action to put things right.

Putting things right

My understanding is that Hartley has already paid the £200 trouble and upset compensation to Mr C directly and so nothing further is required in that regard.

But to put things right, Hartley should do the following:

- Refund the £1,079.42 fees to Mr C's SIPP account as previously agreed.
- Refund the difference between any fees collected since January 2021 to date and the £5 annual fee that was agreed (and return that difference to Mr C's SIPP account).
- Ensure that whilst the SIPP is only used to hold the illiquid investment and cannot be closed, only the agreed annual fee of £5 is charged and collected from Mr C's SIPP.

These steps are in line with what both parties have previously agreed to and so I consider them a fair and reasonable resolution in the circumstances of this complaint.

My final decision

My final decision is that I uphold Mr C's complaint against Hartley Pensions Limited, and I direct it to put things right by following the steps set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 24 June 2022.

Ross Hammond
Ombudsman