

## **The complaint**

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

Mr V's represented by Mr P.

## **What happened**

In March 2018, Hartley took over the management of Mr V's SIPP from a previous pension provider which had gone into administration.

For ease, I've set out the relevant businesses involved in the setting-up and operation of Mr V's SIPP below:

### *Choices Financial Solutions*

An independent financial advisor who advised Mr V to transfer his existing pensions into the SIPP in February 2012.

### *The Lifetime SIPP Company (Lifetime)*

Lifetime was a regulated SIPP operator which provided Mr V's SIPP until March 2018 when it entered into administration.

### *Hartley Pensions Limited (Hartley)*

Hartley is a regulated SIPP operator which acquired Mr V's SIPP in March 2018 by novation following Lifetime entering administration.

### *Hartley SAS Limited (Hartley SAS)*

Hartley SAS was contracted to carry out the day-to-day administration of SIPPs for Lifetime, including collecting annual and ad-hoc fees. It continues to perform this role for Hartley since Lifetime entered administration.

In February 2012, Choices advised Mr V to transfer his existing pensions with the Co-Op and AEGON into the Lifetime SIPP. £60,616 of Mr V's SIPP funds were invested in Storefirst. Initially, investment returns were paid to Mr V. And in November 2017, Mr V received an uncrystallised funds pension lump sum.

However, Storefirst was later found to be in financial difficulties and was ultimately presented with a winding-up order. Mr V made a complaint to the Financial Services Compensation Scheme (FSCS) about the advice he had received from Choices to transfer his pensions and invest in Storefirst. He was paid the FSCS compensation limit of £50,000. The FSCS valued the Storefirst investment at £0. It didn't take assignment of the investment.

Hartley valued the Storefirst investment at a nominal amount of £1.00. It said it can't obtain a

true valuation of the asset. But it said that as the Storefirst investment is still an active asset, the SIPP can't be closed and that annual administration fees in line with Lifetime's fee structure would still apply. So it continued to charge Mr V a total of £744 per year. This was broken down as a £320 annual administration fee, together with a non-standard asset fee of £300, plus VAT.

Mr V was unhappy that fees were being charged for an investment valued at £1.00. Mr P asked Hartley whether Mr V could purchase the investment himself and close the SIPP. Hartley set out the steps Mr V would need to take in order to do so. But it maintained that as the Storefirst investment remained a live asset, the annual fees would still be due. So Mr P asked us to look into Mr V's complaint.

Our investigator thought Mr V's complaint should be partly upheld. He didn't consider that Hartley had met its obligations under Principle Six of the Financial Conduct Authority's (FCA's) Principles for Business – the requirement for a financial business to act in its customer's best interests and to treat them fairly. He also referred to a thematic review carried out by the FCA's predecessor which broadly stated that SIPP operators needed to treat their customers fairly.

The investigator felt that Hartley was treating Mr V unfairly and charging unnecessarily high fees for the SIPP. He concluded that given the nature of the investment, Hartley would only need to carry out limited administration tasks. And he noted that Hartley offered its new customers similar SIPP services at a substantially lower cost. So he felt that Hartley should charge Mr V what it was charging new customers for its Abacus single asset SIPP, as Mr V's SIPP was only holding one asset. Therefore, he considered this was a fair comparison.

Overall, he recommended that Hartley should refund the difference between what it's been charging Mr V in fees and the annual charge for its Abacus single asset SIPP, plus 8% interest. And he recommended that Hartley should give Mr V reasonable assistance to close the SIPP.

Hartley accepted the investigator's view, albeit with reservations. It said the Abacus SIPP wasn't capable of holding non-standard assets. It felt its Prosperity SIPP, which could hold non-standard assets, was a fairer comparison.

Mr P let us know that Mr V didn't accept the investigator's assessment. In summary, he said that Mr V was an unsophisticated investor, who had been misadvised by Choices. He said that Mr V was in poor health and simply wanted the SIPP closed down, to avoid any further fees being charged. He felt that Hartley's assertion that a full valuation was necessary before the asset could be sold was ridiculous. He stated that he and Mr V didn't see how it could be treating customers fairly to charge more in fees than the value of the underlying investment. He felt it would be fairer to find that the full charges should be refunded and the SIPP should be closed.

The complaint was passed to me to decide. Ahead of issuing this decision, I asked our investigator to let Hartley know why I was likely to conclude that redress should be calculated in line with the Abacus SIPP, rather than the Prosperity SIPP.

### **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.

Having done so, I don't think Hartley has treated Mr V fairly and so I've decided to partly

uphold his complaint. I'll explain why.

First, it's important I make it clear that Hartley wasn't responsible for the advice Mr V was given to transfer his existing pensions into the Lifetime SIPP. Neither is it responsible for any of the fees Mr V was charged by Lifetime prior to March 2018. Hartley is only responsible for administration of the SIPP after March 2018. So I need to decide whether it was fair and reasonable for Hartley to charge Mr V an annual fee for his SIPP after March 2018 and if so, what level of fee would be fair.

As the investigator explained, the FCA's Principles for Business set out fundamental obligations on the financial businesses it covers. In my view, Principle six is particularly relevant. This states that a financial business '*must pay due regard to the interests of its customers and treat them fairly.*' And I agree that the FCA's predecessor's thematic review also places an obligation on SIPP providers to treat their customers fairly. As such, I've carefully considered Hartley's obligation to treat Mr V fairly when deciding what's fair and reasonable in the specific circumstances of this complaint.

I appreciate that the fees Hartley has charged Mr V are those which were agreed with Lifetime when the SIPP was established and that the non-standard asset fee was introduced whilst Lifetime was still the SIPP operator. And so under the terms of the SIPP, Hartley is contractually entitled to collect the fees. But I need to consider whether that's fair and reasonable in the wider circumstances. Mr V's SIPP holds a single asset. The investment in has become illiquid and is effectively worthless at present, although I accept Hartley says Mr V has received some returns. This has resulted in Mr V being unable to transfer that asset or close the SIPP.

It's clear that Hartley took over Mr V's SIPP at a time when the Storefirst investment was already in difficulty. I also appreciate Mr V is in a difficult situation financially and Mr P says he is in poor health, so I understand how frustrating it must be to be charged fees for an asset he considers has no value. I need to balance those considerations against the fact that Hartley is a commercial business and there is a cost to it in providing administration of the SIPP. But the fees Hartley levy upon Mr V must be fair.

I understand there are a number of tasks and responsibilities that may be required to be carried out in relation to the administration of a SIPP. In his assessment, the investigator set out a list of what those things may be – but I won't repeat them all here as all parties have seen that list.

Hartley hasn't evidenced specifically what action has been required to administer Mr V's SIPP, but I'm satisfied that some work does need to be undertaken. As I've set out above, the fees Hartley has levied in relation to Mr V's SIPP are the fees that were in place and agreed between Mr V and Lifetime when the SIPP was set up. And the non-standard asset fee was later imposed by Lifetime in 2016. But I don't think that automatically makes it appropriate for Hartley to continue with those fees.

I've considered what Hartley would have charged a new customer for a similar service. As the investigator explained, Hartley's website says the following about all of the SIPP product it offers:

*'The Annual Administration Fee is charged in advance and covers the day-to-day administration of your SIPP. This includes collecting pension contributions, claiming tax relief, providing an annual valuation, and completing all HMRC and FCA reporting to maintain the tax efficiency of your pension.'*

There is no distinction made between the different types of SIPP products Hartley offers.

The Abacus SIPP attracts an annual administration fee of £175, plus VAT. It seems to me that Hartley is charging Mr V more for his SIPP than it charges a new customer, on the basis of the previous fee agreement with Lifetime, rather than the fee reflecting the actual work Hartley carries out. And I think a new customer is likely to pose further work to Hartley than an existing customer with a single asset valued at a nominal amount. In my view, this isn't treating Mr V fairly.

Hartley also charges Mr V a non-standard asset fee. The regulator imposed capital adequacy requirements on SIPP operators, calculated by reference to the amount of non-standard assets held in its SIPP. I accept that Mr V's investment is a non-standard asset. But Hartley hasn't told us what value it's attached to Mr V's investment or how it affects its capital adequacy requirements. And it hasn't set out any extra costs it incurs.

I'm also mindful that this situation remains ongoing. The FSCS hasn't taken assignment of the investment and Mr V's SIPP can't be closed while it remains active. I don't think it would be fair for Hartley to continue to charge Mr V annual fees of £744, potentially for many years, until this situation can be resolved. I find too then that the fair outcome here is for Hartley to charge Mr V the fee it charges its new customers for the Abacus SIPP – bearing in mind that there is still some work it's required to carry out in relation to it, subject to any regulatory restrictions that might be imposed on Hartley from time to time. And I agree that Hartley must refund the difference between the fees it's charged Mr V since it took over operation of the SIPP and the fees he would've paid for the Abacus SIPP, together with interest of 8%.

I appreciate Hartley considers that the Abacus SIPP isn't an appropriate comparison, as the Abacus SIPP can't hold non-standard investments. I've thought about this. I acknowledge that the Abacus SIPP is a single asset SIPP which doesn't hold non-standard assets. But Mr V's investment is a single illiquid asset. And I don't think, given the status and value of the investment – that this situation is reflective of holding an unimpaired non-standard asset with a significant value.

Hartley hasn't provided me with evidence to show that the work it's undertaken in relation to Mr V's SIPP justifies the higher Prosperity fees it's suggested. So I find a comparison with the Abacus SIPP to be acceptable and calculating the refund due based on the applicable Abacus fee leads to a fair outcome in the circumstances of this case.

### **Putting things right**

To put things right, Hartley must reduce the fees it's charging Mr V, so that he is only being charged the lower annual administration fee equivalent to that charged to a new customer for the 'Abacus' SIPP, subject to any regulatory restrictions which may be imposed on Hartley from time to time.

Hartley must also refund to Mr V the difference between what he's actually paid since it took over the SIPP from Lifetime, and what he would have paid had he been charged the fees set out above. Any refund must be paid plus 8% simple interest per year from the date each payment was made to the date of settlement.

I appreciate Mr V finds himself in a situation not of his choosing and I do understand how frustrating it must be for him. Until all investments in the SIPP can be disposed of, then the SIPP itself cannot be closed. This is not a straightforward situation, but I think Hartley should provide all assistance it reasonably can to assist Mr V, to engage with any necessary parties to arrange for the disposal of the underlying investments and enable closure of the SIPP.

I realise Mr V may be disappointed that I haven't directed Hartley to cancel all fees. But as I've explained, Hartley does need to carry out some tasks in relation to Mr V's SIPP and so I think it's reasonably entitled to charge some administration fees to reflect this. This means I don't think I could fairly or reasonably direct Hartley to refund all of the fees that Mr V has paid to it.

### **My final decision**

For the reasons I've given above, my final decision is that I uphold this complaint in part.

I direct Hartley Pensions Limited to put things right by following the steps I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 7 April 2022.

Lisa Barham  
**Ombudsman**