

## **The complaint**

Mr M complains about the actions of Rowanmoor Personal Pensions Limited (Rowanmoor) when they chased him for unpaid SIPP fees, in particular the instruction of a debt collection firm and subsequent court recovery proceedings they instigated.

## **What happened**

Mr M took out a Self-Invested Personal Pension (SIPP) with Rowanmoor in 2012. A few years later, he moved address but didn't update Rowanmoor about this.

The terms and conditions of Mr M's SIPP stipulated his account needed to maintain a minimum balance of £2,000 (cash, or other easily realisable assets) to meet ongoing charges. However, investments within the SIPP (shares in an unlisted company) became worthless, and the cash balance decreased as annual charges were levied. By 2016, the cash balance had effectively been extinguished.

Rowanmoor wrote to Mr M and his Independent Financial Advisor (IFA), both by letter and email, asking that he take steps to value the shares, and pay the outstanding annual fees. Rowanmoor's solicitor also wrote to Mr W three times in 2017 asking for the arrears (then just over £550) to be paid, otherwise Court proceedings may be issued.

Further emails were sent by Rowanmoor to Mr M and his IFA during 2019, asking for the shares in the SIPP to be valued. Mr M responded to one of these, in April 2019, to say he'd try to arrange the share valuation as requested. In July 2019 Rowanmoor re-instructed their solicitor to commence recovery proceedings of the outstanding fees (by then, just under £1,750), and they wrote to Mr M in July and August 2019 and advised Court proceedings would commence if the amount wasn't paid. There was no response, and judgment was obtained in October 2019 in the sum of just over £2,200.

A new address was then located for Mr M, via tracing agents instructed by Rowanmoor, in January 2020. A letter was hand-delivered to Mr M at this new address some days later, advising him of the amounts owed and the existence of a County Court Judgment (CCJ). Mr M was unhappy with this and complained. He accepted he hadn't notified Rowanmoor when he moved house but believed Rowanmoor should have communicated with him by email when chasing the outstanding fees – he said this was how they'd communicated with him previously. He wanted Rowanmoor to remove the CCJ they'd obtained. Mr M said he'd experienced a great deal of stress as a result of Rowanmoor's actions and believed their approach to have been unduly heavy-handed.

Rowanmoor explained they'd tried to communicate with Mr M on a number of occasions, using the address they had on file, as well as via email. They also mentioned they'd sent letters to Mr M's IFA, in the expectation he would advise Mr M about the arrears that were accumulating. However, to bring the matter to a conclusion, Rowanmoor offered to take steps to have the CCJ removed (at their expense), providing Mr M paid them £1,500 as final settlement for the outstanding fees. And they would close the SIPP, but continue to hold the investments as a valueless asset – they'd hold the shares as a bare trustee in case/until they attain a value and a distribution is made. No new fees would be applied until this happened.

Mr M was unhappy with this offer and brought his complaint to our service. However, one of our investigators felt Rowanmoor's offer was fair. Our investigator explained our service can only consider certain complaints – charging and pursuing fees is a regulated activity so we can consider that, but we couldn't consider the enforcement action element of the complaint because that isn't a regulated or ancillary (essentially, connected) activity. Our investigator also highlighted the relevant terms of Mr M's SIPP, including Mr M's obligation to notify Rowanmoor of a change of address within 30 days. The investigator explained that Rowanmoor *had* emailed Mr M (albeit only once), had reached out to him and his IFA multiple times, and ultimately concluded they'd done nothing wrong in how they'd pursued their outstanding fees.

Mr M was unhappy with this response. He felt Rowanmoor had effectively admitted fault by agreeing to reduce the fees he owed. And the debt collector who visited him had caused him much stress. He mentioned again Rowanmoor's failure to email their communications to him, even though it was clear they had the correct email address. He felt Rowanmoor should take steps to remove the CCJ, and he'd pay them £50 as an act of good faith.

Rowanmoor refused this but did agree to accept a reduced settlement of £1,000. Mr M again refused this. He counter-offered a settlement of £150, which Rowanmoor refused. It being clear that no agreement could be reached, both parties wished for the case to be considered by an ombudsman, so it's been passed to me to 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.

First of all, it's not in dispute that Mr M was aware his SIPP would incur annual charges. He'd paid them for many years before moving home, so was clearly aware of their existence and need for annual payment. I also note his SIPP application records his occupation as 'financial consultant', and so I'm further satisfied he'd have understood his obligations to ensure his SIPP fees were paid on an annual basis.

I accept the shares held within the SIPP were essentially valueless. However, the fees were still due – which isn't in dispute here - and so I think the fees were fairly applied to Mr M's SIPP account as well. And Mr M accepts he moved home and didn't tell Rowanmoor about this. So, I think the only thing for me to consider here is whether Rowanmoor communicated with Mr M sufficiently, and fairly *after* he moved home. I should also make clear here that I can't consider the actions of the debt collector firm, as debt collection isn't a regulated activity.

I've seen copies of the various communications Rowanmoor sent to Mr M and his IFA from 2016 onwards. I can see that most of the 2017 communications related to chasing the fee arrears (just over £550 at that time). Most were by post, with one email also sent. And Rowanmoor's solicitor also sent three letters in 2017, chasing the arrears, as well.

But from that point on, Rowanmoor's communications (based on the documents they've provided to us) solely focussed on asking Mr M to provide updated valuations of the shares that sat within the SIPP. No mention was made of outstanding fees. In 2018, the information provided shows they only wrote once to Mr M's IFA. In 2019, Rowanmoor emailed both Mr M and his IFA, again about the share valuation matter only.

It was one of these emails, in April 2019, that generated an immediate email response from Mr M – he said he'd arrange a valuation of the shares as soon as possible. Rowanmoor sent

further emails to Mr M chasing the revaluation information - again with no mention of the fee arrears – in August, September and October 2019. And these emails also didn't mention that Rowanmoor had, by this time, re-instructed their solicitors to pursue the fee arrears.

So, in the months before Rowanmoor reinstructed their solicitors to pursue the fee arrears, they were aware there was a 'live' email address for Mr M – he'd replied to them from it in April 2019. However, notwithstanding this knowledge, I can't see that any emails were sent to Mr M to discuss the fee arrears. In fact, the only 'fee arrears' communications after the April 2019 email exchange were two letters from the solicitor, in July and August 2019, asking for the debt (by then just under £1,750) to be paid, or Court proceedings would commence. And even after these letters were sent, Rowanmoor continued to email Mr M (August, September and October 2019), but again only on the subject of the share revaluation.

I think, given the severity of the outcome Rowanmoor had instructed their solicitors to pursue (obtain a CCJ), it would have been fair and reasonable for Rowanmoor to have ensured all available communication channels were explored/utilised to (a) pursue the arrears and (b) notify Mr M of the ramifications of non-payment/engagement with them on the subject. And whilst it's impossible to know what Mr M would have done had he received any such emails – given I accept he hadn't responded to the further 'share valuation' emails sent after April 2019 - I'm persuaded that he's more likely than not to have engaged with Rowanmoor on the matter. I think his likely wish to avoid a CCJ would most likely have prompted him to make such contact.

So, I don't think Rowanmoor acted fairly, or took all reasonable steps to contact Mr M after April 2019. But that doesn't mean I think the fees – which I've already said I think were fairly applied – should be waived. They were fees properly due and payable under the terms of the SIPP, and Mr M knew this. Which brings me to what I feel would be a fair outcome here.

Ordinarily, I'd expect Rowanmoor to provide compensation to Mr M for the avoidable distress their actions (after April 2019) caused him. And, given what I've said above, I'd expect them to take steps to remove the CCJ. But here, Rowanmoor have already offered to compensate Mr M by significantly reducing the fees – from £1,750 to £1,000. And they've already undertaken to prepare the necessary consent order to place before the Court to seek the CCJ removal.

I acknowledge Mr M thinks his outstanding fees should be reduced to £150, to reflect the distress he's experienced. However, I don't agree. The fees were properly incurred and due, and so I don't think a reduction in the amount Mr M properly owes to Rowanmoor of that size is fair or reasonable.

### **Putting things right**

So, for the reasons I've outlined above, I think Rowanmoor's existing offer – prepare and serve a consent order to remove the CCJ, on receipt of Mr M paying them £1,000 as full and final settlement of the outstanding SIPP fees, and to continue to hold the shares as a bare trustee, with no fees applying until such time that they acquire a value and/or a distribution is made – is a fair one. And I won't be asking Rowanmoor to do anything further.

### **My final decision**

For the reasons I've set out above, I uphold this complaint. Rowanmoor has already made an offer to settle this complaint, which I think is fair in all the circumstances. So my decision is that Rowanmoor Personal Pensions Limited should do the following:

- Upon receipt of payment by Mr M of £1,000 in respect of outstanding SIPP fees, such payment to act as full and final settlement of all outstanding SIPP fees, and any associated recovery costs incurred by Rowanmoor, Rowanmoor must do as follows:
  - o Prepare and file a Consent Order to place before the Court to seek the removal of the County Court Judgment obtained in their favour, against Mr M, in relation to Mr M's SIPP fee arrears
  - o To continue to hold the shares that sat in the SIPP as bare trustee, until such time that they either acquire a value, or generate a return
  - o Rowanmoor will not charge any fees in respect of their holding the shares in this way until such time that the shares acquire a value, or generate a return, in which case Rowanmoor would be permitted to charge a management fee equivalent to the amount that would have been charged under Mr M's SIPP agreement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 29 April 2022.

Mark Evans  
**Ombudsman**