

## **The complaint**

Mr P has complained about the fees he is being charged by Hartley Pensions Limited for administering his Self-Invested Personal Pension (SIPP). He's also unhappy with Hartley's administration of his SIPP and in particular, with the delays he's experienced in trying to withdraw some of his pension from the SIPP.

## **What happened**

For ease of reference, I've set out the relevant parties below that I'll refer to within this provisional decision.

### *Blackstar Wealth Management*

An Independent Financial Advisor who advised Mr P to transfer his pension funds into the SIPP.

### *Greyfriars Asset Management LLP*

Greyfriars was a regulated SIPP provider and provided Mr P's SIPP until 25 October 2018.

### *Hartley Pensions*

A regulated SIPP operator, who acquired Greyfriars' book of business and which acquired Mr P's pension by novation from Greyfriars on 25 October 2018.

### *Hartley SAS Limited*

The pension scheme administrator, which conducts the day to day administration for Hartley Pensions. Hartley SAS collects Mr P's fees from his SIPP.

In 2014, Blackstar advised Mr P to transfer his existing pension provision into a Greyfriars SIPP. A SIPP was established and Mr P's pension funds were used to invest in Colonial Capital and AJ Bell funds. A private bank account was set-up alongside the SIPP, for the receipt of investment returns and for the payment of Greyfriars' annual administration fee of £600.

Unfortunately, in March 2017, Colonial Capital went into administration. The value of Mr P's investment with Colonial Capital reduced to £1 and the fund became illiquid.

In 2018, Mr P got in touch with Greyfriars to request an uncrystallised funds pension lump sum (UFPLS). He learned that Hartley had acquired his SIPP and so in November 2018, he contacted Hartley to request a UFPLS from the AJ Bell investment and his cash funds from the associated bank account. Hartley didn't respond to Mr P's request and so in February 2019, Mr P got back in touch.

Hartley did send Mr P the relevant paperwork at this point. It told Mr P that his SIPP held the following funds:

AJ Bell Investment: £3397.90  
Colonial Capital: £1  
Cash: £745.45

Hartley told Mr P that it could pay him his benefits, so long as he kept £2000 in the AJ Bell investment, in line with the terms of that fund. It also said that it couldn't close the SIPP because the Colonial Capital investment was illiquid. Mr P returned the paperwork promptly to request a UFPLS, but it appears Hartley took no action at that point. Also in February 2019, Hartley applied a £300 administration fee to Mr P's SIPP account. That's because Greyfriars had only debited half of Mr P's annual £600 fee in May 2018 – it had written to him at the time to explain that it was deferring half of the fee.

In March 2019, Hartley sent Mr P an invoice for his annual £600 fee. As there were insufficient funds in the associated SIPP bank account to cover the fees, Hartley told Mr P he'd need to pay the shortfall balance of £154.07. It chased this payment in May 2019 and threatened Mr P with legal action if he didn't make payment.

Mr P was unhappy with Hartley's administration of his SIPP. He didn't think he ought to have to pay the annual fee as he'd requested a UFPLS in November 2018, which Hartley hadn't actioned. Hartley maintained that the fee was due because it said while Mr P had asked for a UFPLS, the illiquidity of the Colonial Capital fund meant the SIPP couldn't be closed and therefore, it would still be required to carry out a number of administrative tasks. It did acknowledge though that Mr P's UFPLS request ought to have been picked up far sooner and it said it would action the request as a priority.

By November 2019, however, Mr P's UFPLS request still hadn't been actioned and so he asked us to look into his complaint. He also let us know that he'd taken claims against Blackstar and Greyfriars to the Financial Services Compensation Scheme (FSCS), which couldn't be progressed by the FSCS because Hartley hadn't provided it with information it'd requested.

Our investigator thought Mr P's complaint should be partly upheld. She didn't consider 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. She 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.

### *Customer service*

In this case, the investigator noted that Hartley had caused delays in the arrangement of Mr P's UFPLS. Despite it telling Mr P in July 2019 that it would action his request as a priority, it didn't contact him again until December 2019. It told Mr P at this point that the SIPP couldn't be closed because of the illiquid Colonial Capital investment, but that he could withdraw funds from the AJ Bell fund so long as he left £2000 in it. Hartley said that if the FSCS took assignment of the Colonial Capital investment, the SIPP could be closed.

The investigator noted that Hartley had gone on to send Mr P the relevant paperwork so that he could request a UFPLS in June 2020 – over a year after he had first asked for this form. She considered this was an unacceptable amount of time and that Hartley had fallen short of its service standards. She also noted that Mr P had told us that Hartley's handling of his request had caused him significant distress and inconvenience, especially as he'd been left unable to access his funds. She recommended that Hartley should pay Mr P £400 compensation in recognition of its errors. She recommended that Hartley should proactively

send Mr P the paperwork he needed to carry out the UFPLS. She did state that the terms of Mr P's AJ Bell investment meant that he needed to keep a balance of £2000 in the fund. So she thought Hartley was entitled to keep this amount of money in the fund and should pay the remainder balance of the AJ Bell investment to Mr P.

### *SIPP Fees*

The investigator acknowledged that Hartley hadn't accepted any liability for Greyfriars' actions and so she didn't think it could be held responsible for any fees Greyfriars had charged. She noted that in March 2020, Mr P had been charged a further £600 annual fee, which hadn't been paid due to the insufficiency of funds in his bank account.

She considered the administrative tasks Hartley SAS told us it carried out on Hartley Pension's behalf, which it says need to be carried out irrespective of the value of a SIPP. But she noted that Hartley hadn't provided any information to show what work it had carried out in relation to Mr P's SIPP since it acquired it – in particular, because Mr P had been trying to withdraw his UFPLS since November 2018 and wanted the SIPP to be closed. She felt that if Hartley had responded to Mr P's initial request promptly and with the relevant instructions, it would've been likely that he'd have been paid the UFPLS within a couple of months. This would've left only the illiquid Colonial Capital investment in the SIPP as the single asset, which was more or less dormant. So she concluded it was unlikely that Hartley SAS would've needed to carry out all of the administrative work it'd referred to, or that if tasks did arise, that significant work would be necessary.

The investigator looked into the SIPP products Hartley offered and noted that its website said the following about annual administration charges:

*'The Annual Administration Fee is charged in advance and covers the day-to-day administration of your SIPP. This include 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.'*

She saw that the same wording applied to all Hartley products and she didn't think Hartley made any distinction between the types of work it carried out on different SIPP products. Hartley offered a single asset Abacus SIPP for £175 per year plus VAT. This meant that Hartley was charging Mr P more than it would a new customer, simply because of Mr P's previous fee agreement with Greyfriars, rather than because the £600 annual fee reflected the work Hartley carried out. So she didn't think Hartley was treating Mr P fairly.

Additionally, she didn't think Hartley had given enough regard to the situation Mr P had found himself in, or that it had done enough to help him. She considered that a transfer of the Colonial Capital investment could only be made in specie and she didn't think any other operator would be willing to accept such an investment. She felt this left Mr P effectively trapped in the Hartley SIPP, as he couldn't shop around or close it.

So she recommended that Hartley should charge Mr P what it's charging new customers for its Abacus single asset SIPP, as his SIPP should now only be holding one asset. She acknowledged that there is some work involved in the administration of Mr P's SIPP regardless of the situation with the asset held within it, so she thought this was fair to both parties.

She acknowledged that the Abacus SIPP might not be a like for like comparison in the type of SIPP that could house Mr P's Colonial Capital investment, but she thought it was a good benchmark of what Hartley could charge in comparison to other customers who had come to them directly, in light of the likely work involved in administering Mr P's

SIPP.

And she recommended that in terms of the fees Mr P had already paid to Hartley, Hartley should refund the difference between what it has been charging Mr P in fees and the annual charge for its Abacus' single asset SIPP, plus 8% interest.

#### *FSCS and other administrative matters*

The investigator had sight of letters from the FSCS which stated that Mr P's claims with it would become inactive due to a lack of response from Hartley to its information requests. So she recommended that Hartley should provide the information to the FSCS, meaning it could progress the claims.

Finally, she recommended that Hartley should pro-actively help Mr P to bring things to a conclusion and provide an update on the Colonial Capital investment.

#### *Responses to the assessment*

Mr P accepted the investigator's recommendations. His representative felt it was a fair and true reflection of the situation to date, although they pointed out that Mr P had received a further letter from the FSCS which stated that it hadn't received necessary information from Hartley.

Hartley said it accepted the investigator's recommendations, albeit with 'reservations' about the Abacus SIPP. It provided a breakdown of the fee refund and interest due to Mr P, based on the application of Abacus SIPP fees.

#### *Current position*

The investigator noted though that Hartley had charged Mr P two lots of fees in 2019 - £300 in February 2019 and £600 in March 2019. When it had recalculated the refund due in line with the Abacus SIPP fee, it had charged £110 in February 2019 and £220 in March 2019. Hartley said that the £110 fee represented some of the debt it had taken on from Greyfriars when it purchased its book of business and so it said this was why the money had been retrospectively billed. It also stated that as it had taken over the Greyfriars book in October 2018, it had been entitled to charge fees between November 2018 and April 2019, irrespective of whether it had billed retrospectively.

Two investigators asked Hartley for evidence to show that it had taken on debts or fees specifically related to Mr P. But despite repeated requests, this information was not forthcoming.

I issued a provisional decision on 7 March 2020. In my provisional decision, I explained the reasons why I didn't think Hartley had treated Mr P fairly. I said:

*'It seems to me that all parties to this complaint accepted our investigator's opinion that Hartley hadn't met its regulatory obligation to act in Mr P's best interests and to treat him fairly. In my view, Hartley and Mr P both agreed with our investigator's recommendations that:*

- *Hartley should recalculate the SIPP fees it'd charged Mr P following its acquisition of his SIPP in line with the fees it would charge a new customer for an Abacus SIPP;*
- *It should add interest of 8% simple to those refund amounts;*
- *It should pay Mr P £400 compensation for his trouble and upset;*

- *It should engage with Mr P to proactively bring things to a conclusion and provide an update on the Colonial Capital investment;*
- *It should send Mr P the necessary paperwork to allow him to disinvest from the AJ Bell investment and;*
- *It should send the FSCS the information it requires to progress Mr P's claims.*

*As such then, it seems to me that I don't need to examine each of these points in turn or to make detailed findings upon each point, although I do intend to further consider the potential impact of Hartley's delay in actioning Mr P's UFPLS request on him. I've set out the investigator's reasoning above and I agree with the findings she reached and for broadly the same reasons. I also note in Hartley's response to the assessment that it intended to send information to the FSCS to allow it to continue its investigations. For completeness though, given Hartley's reservations about using the Abacus SIPP in its fee recalculations (although I acknowledge it has used the fees associated with the Abacus SIPP when calculating Mr P's refund), I'd like to address this point.*

*The Abacus SIPP is a single asset SIPP which doesn't hold non-standard assets. Once Mr P's UFPLS has been actioned, his remaining investment will be a single illiquid asset. And I think, given the status and value of the Colonial Capital investment – that a comparison with the Abacus SIPP is acceptable in these circumstances. As such, I'm currently satisfied that calculating the refund due based on the applicable Abacus fee leads to a fair outcome here.*

*However, it's clear that an outstanding issue remains. Hartley maintains that it's entitled to charge Mr P a fee of £110 in February 2019. Initially, it said a fee had been applied at this point representing the 50% portion of Mr P's annual 2018 fee, which Greyfriars deferred in May 2018. It later told us that this fee represented some of the debt it had taken on from Greyfriars. And it referred to it being entitled to charge 5/6 of the deferred fee because it had taken over the SIPP in November 2018.*

*I've thought carefully about Hartley's arguments. Our investigators have asked Hartley, on more than one occasion, for evidence showing that it purchased Mr P's debts from Greyfriars. Despite these requests for specific evidence, this has not been forthcoming. So in the absence of such evidence, I think the fair outcome would be for Hartley to refund this particular fee in full.*

*I acknowledge that Hartley took over Mr P's SIPP broadly halfway through the financial year. However, prior to the acquisition of the SIPP, Mr P paid Greyfriars an annual fee. In May 2018, Greyfriars decided to defer half of its annual fee and therefore, only charged Mr P £300 at that point. While Hartley might consider that Greyfriars would've called on the remaining balance in September 2018, I've seen no evidence to suggest this was the case. And in any event, in my view this was a fee which was owed to Greyfriars, not to Hartley. So the fact that Greyfriars chose not to debit the fee in full in April 2018 doesn't mean that an obligation necessarily arises on Mr P to pay Hartley the outstanding fee balance.*

*It seems to me that had Greyfriars charged Mr P the full fee of £600 in April 2018, Hartley wouldn't have been entitled to any remuneration for the six month period it administered his SIPP after it took over Greyfriars' book.*

*There is simply no available evidence to show that Greyfriars and Hartley agreed that Greyfriars would charge its customers half their annual fee and that Hartley would be entitled to charge the other half once it took over Greyfriars' business. And in the absence of such evidence, I don't think was fair or reasonable for Hartley to have applied this fee in February 2019.*

*It's open to Hartley to provide such an agreement or evidence that it specifically took on Mr*

*P's debts from Greyfriars in response to this provisional decision.*

*As such, in addition to the settlement Hartley has already agreed to, I also plan to direct it to refund the fee Mr P was charged in February 2019, together with interest at an annual rate of 8% simple. That's because I'm not satisfied Hartley has shown it was fair and reasonable for it to charge any fee at this point.*

*I've next turned to consider any potential impact Hartley's delay in acting on Mr P's UFPLS request may have caused him. As I've set out above, it doesn't appear to be in dispute that Hartley caused delays and didn't provide an acceptable level of service in the payment of UFPLS to Mr P. It has agreed to compensate him for the trouble and upset this caused him in line with the investigator's findings. The delay caused was substantial and so I think Hartley should also establish if any financial loss has been caused to Mr P as a result of this.*

*To do this, Hartley will need to calculate what Mr P could've received but for the delays it caused and add to this 8% simple per year from the date payment would've been made until the date of payment and compare this to the actual payment. If the notional payment is greater than actual payment, then Mr P has suffered a financial loss and Hartley should compensate him for this.*

*Based on the available evidence, I think a reasonable approximation for when the payment could've been made if Hartley had dealt with Mr P's request appropriately and without delay would be 22 January 2019. I've established this based on the following timeline:*

*6 November 2018 – Hartley received Mr P's first UFPLS request.*

*20 November 2018 – Hartley ought to have sent Mr P the necessary form and paperwork.*

*4 December 2018 – Mr P is likely to have returned the form requesting a total withdrawal he wasn't entitled to and which didn't include bank details. (I've based this on the form Mr P did complete once it was sent to him).*

*18 December 2018 – Hartley ought to have returned the form to Mr P explaining the terms of the AJ Bell investment; what his withdrawal entitlement was and explained his options. It also ought to have asked for his bank details. Hartley could also have explained the position of the Colonial Capital investment at this point.*

*8 January 2019 – Based on a slightly longer period for the Christmas and New Year holidays, I think Mr P would've most likely returned the completed and applicable paperwork at this point.*

*22 January 2019 – Hartley ought to have made payment to Mr P.*

*If Hartley disagrees with the timeline I've proposed above, it should set out its own timeline and methodology and explain how it's reached it in response to this provisional decision. To compensate Mr P for any financial loss he may have suffered from the delay in it dealing with Mr P's withdrawal request, I plan to find that Hartley must:*

- Establish the maximum Mr P could've withdrawn from his pension on 22 January 2019*
- Add to that 8% simple per year from 22 January 2019 and up until the date of payment*
- Compare that to the actual amount paid*

*If the notional amount plus interest is greater than the actual payment amount, Mr H has*

*suffered a loss and Hartley must therefore pay the difference to Mr P. If Hartley still hasn't made the payment, it should arrange for the payment to be made as a matter of urgency and then undertake the above calculation.'*

I asked both parties to send me any further evidence or comments they wanted me to consider.

Both Mr P and Hartley let us know that they accepted my provisional findings.

### **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.

As both parties have accepted my provisional findings, I see no reason to change them.

So my final decision is the same as my provisional decision and for the same reasons.

### **My final decision**

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

I direct Hartley Pensions Limited to:

- Charge Mr P what it is charging new customers for its Abacus single asset SIPP.
- Refund Mr P the difference between what he's actually paid since it took over the SIPP from Greyfriars, and what he would have paid had he been charged the fees set out above. Any refund must be paid plus 8% simple interest from the date each payment was made until the date of settlement.
- Refund the February 2019 fee payment in full, together with interest at an annual rate of interest of 8% simple from the date of payment until the date of settlement.
- Calculate whether Mr P has suffered any financial loss as a result of the delay in its actioning Mr P's UFPLS request. As I've set out above, it will need to:
  - Establish the maximum Mr P could've withdrawn from his pension on 22 January 2019
  - Add to that 8% simple per year from 22 January 2019 and up until the date of payment
  - Compare that to the actual amount paid

If the notional amount plus interest is greater than the actual payment amount, Hartley will therefore need to pay the difference to Mr P. If Hartley still hasn't made the payment, it should arrange for the payment to be made as a matter of urgency and then undertake the above calculation.

- Pay Mr P £400 compensation.
- Engage with Mr P to proactively bring things to a conclusion and provide an update on the Colonial Capital investment;

- Send Mr P the necessary paperwork to allow him to disinvest from the AJ Bell investment if it hasn't already done so and;
- Send the FSCS the information it requires to progress Mr P's claims if it hasn't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 27 April 2022.

Lisa Barham  
**Ombudsman**