

The complaint

Mr N's complaint against Hartley Pensions Limited is about his Self Invested Personal Pension (SIPP). He has said:

- He is unhappy that Hartley Pensions is using the previous SIPP provider's contract when that provider was found to have breached the Financial Services and Markets Act (FSMA) 2000 and other Conduct of Business Sourcebook (COBS) Rules in court. Mr N thinks it's unfair to use the original contract as it's null and void.
- He believes someone else dated the contract he signed and this is another reason why it's null and void.
- He didn't sign a Letter of Authority for Hartley Pensions and so they shouldn't have been able to use the one he signed for the previous SIPP provider.
- Hartley Pensions' litigation team were supposed to call him but never did.
- Hartley Pensions ceased all phone contact with him. He says this is discriminatory as he has dyslexia and requires contact by phone.
- His SIPP bank account was set up using his middle initial, however Mr N doesn't use his middle name. Mr N also says the address registered isn't valid. Mr N says Hartley Pensions had no authority to change it.
- Documents with the land registry hadn't been updated so Mr N thought he shouldn't have to pay any fees to Hartley Pensions.
- Money was debited from his account on 4 March 2020 and returned on the same day.
- There was a credit on his account on 9 April 2021 from a business, but Mr N doesn't know who it is or what it was in relation to. Mr N says this breached General Data Protection Regulations (GDPR) as he didn't give his account details to be shared with that business.

What happened

I issued my provisional decision on this complaint on 21 April 2022. The background and circumstances to the complaint, and the reasons why I was minded to uphold it in part were set out in that decision. To recap, Mr N had opened a SIPP with the previous SIPP provider in 2012. He invested just over £37,000 in Store First (storage pods). That SIPP provider went into administration, and Hartley Pensions acquired Mr N's SIPP in September 2019.

By December 2019 the value of the Store First investment had fallen to £1. Mr N complained to Hartley Pensions about the fees that it continued to charge on the SIPP. The matter was referred to us, and Hartley Pensions agreed to stop applying them.

Mr N subsequently raised further issues about the administration of his SIPP, and ultimately made another complaint. In August 2021 Hartley Pensions informed Mr N that it was stopping all phone contact with him.

Mr N referred his complaint to us, and one of our investigators considered it. She said, in summary, that as Mr N had informed the previous SIPP provider that he had dyslexia when Hartley Pensions had taken over its administration, it should effectively have been aware of it. She said from what she'd seen, Hartley Pensions hadn't made reasonable adjustments to its communications with Mr N. She thought this would have made things more difficult for Mr N and caused considerable frustration. She thought Hartley Pensions needed to put things right in this regard.

However the investigator didn't think that Hartley Pensions' decision to stop phone contact had been unreasonable. She said it appeared that the calls between Mr N and Hartley Pensions had become increasingly unproductive, and communication had broken down. She noted that the SIPP couldn't be closed whilst the storepods investment remained active. However Hartley Pensions had refunded some charges and had agreed not to deduct any further fees. So she thought the position was relatively stable, and regular updates on the SIPP weren't necessary. She noted that Mr N was able to read adapted correspondence, so phone contact wasn't the only means of communication. The investigator said that she wasn't going to ask Hartley Pensions to compensate Mr N for stopping phone contact.

The investigator asked Mr N whether he would agree to an arrangement going forward where he could have phone contact at set times; for example once a month or quarterly. However Mr N had said that wasn't acceptable. The investigator recommended that Hartley Pensions adapted its correspondence going forward. She said that the information that Hartley Pensions had sent to Mr N in the un-adapted correspondence wasn't of an urgent nature, and hadn't led to any major issues with the account. So she recommended that Hartley Pensions pay Mr N £300 in compensation for the distress the matter had caused him.

The investigator said that she wasn't going to ask Hartley Pensions to compensate Mr N for the losses flowing from the investment in Store First, as Hartley Pensions wasn't responsible for advising Mr N to open the SIPP, or for that investment.

Mr N didn't agree with the investigator's assessment and made several points following receipt of it. The investigator considered what Mr N had said and sent a further assessment addressing those points. She said, in summary:

- She hadn't changed her view on Hartley Pensions stopping phone contact and for it failing to adapt its correspondence. The £300 she had recommended that Hartley Pensions pay Mr N in compensation included for the fact it hadn't called Mr N when it said it would.
- Mr N had said the contract he signed was only legally binding between him and the previous SIPP provider. He'd said that following a court ruling, the contracts should no longer be used because they were found to be unfair to the investors. The investigator said that when the previous SIPP provider had gone into administration and the SIPP assets had been bought by Hartley Pensions, the SIPP's were re-registered to a new arrangement. Hartley Pensions had provided a copy of a letter it had sent to SIPP owners on 16 October 2019 which explained that the SIPP's could be transferred to a new SIPP of their choice if owners didn't want to transfer to Hartley Pensions. It said they should let Hartley Pensions know within 30 days if they wanted to transfer elsewhere. Hartley Pensions sent another letter to SIPP owners

dated 15 November 2019. This explained that Mr N's new SIPP trustee was Hartley Pensions Trustees Limited. It said the change didn't have an impact on the investment, fees or day to day administration of the SIPP. The investigator said that Mr N had been given the opportunity to transfer his SIPP to another administrator. And that once Hartley Pensions had acquired the SIPPs from the former provider, a new letter of authority wasn't required. In order to administer the SIPP Hartley Pensions was authorised to continue to use the existing contracts and other documents necessary in order to administer it. However when Hartley Pensions took over the administration of the SIPPs it didn't assume liability for the previous SIPP provider's failings. She said if Mr N wanted to complain about the original contract he should direct his concerns to the FSCS.

- She thought Hartley Pensions was entitled to change the name on the SIPP bank account. But that in any event this hadn't caused any loss or detriment to Mr N.
- Mr N had raised concerns about the registration of documents with the land registry. The investigator said that Hartley Pensions had explained it had all the documentation necessary to prove its legal ownership as the Trustee and Operator. It said re-registration at the land registry wasn't currently legally necessary and could take many years to be completed. The investigator didn't think Hartley Pensions had made a mistake, or that Mr N had suffered a loss as a result of this complaint point.
- Mr N had concerns about money being credited and debited from the SIPP account. The investigator explained the account credit was from the business paying rental income into the SIPP from the storepods. Hartley Pensions had explained that a withdrawal had been made from the account through a direct debit, but this had been returned on the same day. The investigator said that if Mr N had concerns surrounding data protection he could contact the Information Commissioner's Office (ICO).

Hartley Pensions said that it accepted the investigator's assessment.

Mr N didn't agree with the Investigator's assessment. He said, in summary:

- Hartley Pensions had breached discrimination laws, the Equality Act and the Human Rights Act.
- The fact he couldn't move his pension was a breach of the Freedom of Movement Act.
- Hartley Pensions' letter of 16 October 2019 was a mere technicality – he had tried to transfer his SIPP before and it wasn't possible – Hartley Pensions knew this.
- He wanted Hartley Pensions to explain how he could transfer.
- Hartley Pensions should have made him aware that money had been debited and returned on the same day, rather than he find out on his annual statement.
- The FSCS had paid out £35,000 but it should have been £64,000. His case was ongoing.
- The only acceptable outcome was for his SIPP to be closed and the money in the SIPP account to be paid to him.

My provisional finding was that I had come to the same overall conclusions as the investigator, and largely for the same reasons.

I said Section 228 of the Financial Services and Markets Act 2000 required that I determined a complaint by reference to what is, in the opinion of the ombudsman, fair and reasonable in all the circumstances of the case. I said in doing so I was required to take into account, amongst other things, relevant law and regulations, regulators' rules and guidance, and where appropriate, what I consider to have been good industry practice.

I said I thought the starting point was that Hartley Pensions wasn't responsible for the losses that Mr N suffered as a result of the investment in Store First. Obviously it wasn't party to that transaction at the time. And it didn't accept liability for it when it took over the SIPP. I said Mr N appeared to consider he should recover some of those losses from Hartley Pensions because of administrative issues he's had with it. But those losses weren't caused by the administrative issues that he has raised. So it wouldn't be fair to ask it to compensate Mr N for losses that he suffered as a result of another business' actions, for losses that Hartley Pensions didn't cause. I said I had therefore focused on Mr N's complaints about the alleged administrative failings by Hartley Pensions, and any losses, material distress or inconvenience caused by any failings.

Mr N had referred to various legislation that he'd said the firm had breached, and I said I'd taken this into account. But I said that a breach, in itself, didn't give an automatic right to compensation. I said in deciding what's fair and reasonable in all the circumstances and what represented fair compensation, I had to decide what impact any failings by the firm had on Mr N.

I said that, like the investigator, I thought the firm failing to make reasonable adjustments to its communications with Mr N when it should have been aware that he was dyslexic would likely have had a significant impact on him. So I thought Hartley Pensions should pay compensation to Mr N for that failing, and the distress and inconvenience it caused. And that it should make adjustments to its correspondence with Mr N (I understood that Mr N was able to read correspondence with a yellow background). But I said in my view the other administrative issues raised by Mr N didn't cause any losses and wouldn't have had a significant impact in terms inconvenience caused.

Mr N had said that Hartley Pensions' letter of 16 October 2019 was a mere technicality as it wasn't possible to transfer anyway. I said individual SIPP providers decided whether they would accept a transfer of an illiquid investment – not all employed the same policy. However I said although it may have been possible that there was another provider that would have accepted the Store First investment, I accepted the chances were limited. So I tended to agree with Mr N in that sense - he had little option but to move to Hartley Pensions. But I said that wasn't the fault of Hartley Pensions - it wasn't responsible for the investment in Store First or its failings.

I said I appreciated Mr N found himself in an unsatisfactory position not of his choosing, and the frustration that went with that. But I said the SIPP couldn't be closed until the investment had been sold. And another SIPP provider hadn't been found that would accept a transfer. So this wasn't a straightforward situation.

I said I thought it would be in the interests of both parties if a way could be found to enable Mr N to sell the investment and transfer or close the SIPP. Hartley Pensions had said there were technical issues with selling the investment; there was no market to trade it, there was a HMRC issue in respect of the fair market price, and it couldn't be sold without FSCS

permission. However I said it wasn't entirely clear to me what steps Hartley Pensions had taken to try and resolve the matter (if indeed that was possible). And the non-closure of the SIPP was clearly causing Mr N a considerable amount of anxiety.

I said Hartley Pensions was bound by the Regulator's Principles for Business which were set out in the FCA's Handbook. Principle 6 provided that "A firm must pay due regard to the interests of its customers and treat them fairly."

I said to meet its obligations to act in Mr N's interests, I thought Hartley Pensions should have provided all assistance it reasonably could to explore options that might enable the disposal of the underlying investment, and allow the closure of the SIPP. I said both parties could put forward suggestions about how the investment might be sold/the SIPP closed or transferred, in response to the provisional decision. I also said in order to address one of the issues raised by the firm, it would be helpful if Mr N obtained written clarification from the FSCS that it had no objections to his investment in Store First being sold.

Mr N had also said that not allowing him to move his pension was a breach of the Freedom of Movement Act. I said I wasn't sure if he was referring to the freedom of movement in the EU Single Market. If so, I said I didn't think that assisted me in considering the fair outcome on his case, however that Mr N could clarify in his response to this provisional decision.

For the reasons outlined, I said my provisional decision was to uphold Mr N's complaint in part.

I said I intended to order that Hartley Pensions Limited pay Mr N £300 for the distress and inconvenience caused by its failure to adapt its communications with Mr N appropriately.

I also said I was minded to award Mr N another £500 for the distress the matter was causing him if Hartley Pensions couldn't provide evidence to show that it had been acting in Mr N's interests in attempting to find a solution to resolve the matter (selling the investment and closing the SIPP).

Mr N responded to re-iterate some of the points he had already made. He also said, in summary, that my provisional decision didn't mention the problems that he's had with his health. He said he was concerned about leaving his pension to his next of kin, and he wanted the issues resolved as soon as possible. He said Hartley Pensions blocking his number and refusing to close the SIPP was very stressful.

Mr N said the storepods had to be sold at market price which he said was £47,500 in 2015. He said I should recommend that Hartley Pensions pays him the £47,500, and then he could pay back the FSCS. He said the FSCS had already told him that the storepods couldn't be sold at nil value; he wanted Hartley Pensions to write to the FSCS to get written confirmation of this.

Mr N also said there had been a ruling by the Supreme Court regarding s27 of the Financial Services and Markets Act 2000 (FSMA 2000). He said Hartley Pensions was relying on the same contracts despite being aware they were breached under FSMA and the regulator's conduct of business rules. He said his SIPP could be closed completely under s27; he'd been introduced to the original SIPP provider by an unregulated introducer. Mr N said he wanted me to order Hartley Pensions to have a sit-down meeting with him to enable him to close his SIPP.

Mr N also said Hartley Pensions had no right to change the SIPP bank accounts and it should be changed back into the previous provider's name.

Hartley Pensions didn't provide any further evidence or arguments for consideration.

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.

Mr N has told us about how the above issues have had a negative effect on his health. And I don't wish to underestimate the impact the matter has had on him; I appreciate Mr N is in a very frustrating position.

The problem is Mr N wants me to order Hartley Pensions to sell the storepods and close the SIPP. However there isn't a ready market to buy and sell the storepods. I can't direct the sale of the storepods if there is no buyer. And if they aren't sold in accordance with HMRC regulations there is a risk of incurring a tax charge. As I said in my provisional decision, Hartley Pensions isn't responsible for the losses that Mr N suffered as a result of the investment in Store First or losses that flow from that original decision to invest in it. But it is bound by the Regulator's Principles for Business which require it to pay due regard to the interests of its customers and treat them fairly. So I think it should provide all assistance it reasonably can to Mr N to explore options that might enable the disposal of the underlying investment, and allow the closure of the SIPP.

In my provisional decision I asked Hartley Pensions to set out what steps it had taken to try and resolve the matter or what steps it would take. Hartley Pensions didn't respond to my provisional decision. Hartley Pensions has said there are technical reasons why the SIPP can't be closed and I accept that might be the case. However I've seen no persuasive evidence that it is trying to be helpful in the matter and act in Mr N's interests.

Mr N said I hadn't mentioned some of the issues that had been considered by the investigator in my provisional decision; for example the change in name of the bank account. However, as I said in my provisional decision, I'd reached the same conclusions as the investigator and largely for the same reasons. So I didn't specifically comment on every matter unless I thought it appropriate to do so.

The investment losses weren't caused by the administrative issues that Mr N has raised. So I'm not going to order Hartley Pensions to compensate Mr N for losses flowing from him making the original investment. As I've said, what I can consider is the impact that the administrative failings have had on Mr N. Like the investigator, I'm satisfied Hartley Pensions was entitled to change the account name. But even if I was wrong about that, in my view the change in name didn't cause any financial detriment to Mr N. And I think would have reasonably caused only minimal inconvenience.

Mr N has said as the storepods had to be sold at market price (which was £47,500 in 2015), I should recommend that Hartley Pensions pays him the £47,500, and then he could pay back the FSCS. However I don't think there is any reasonable basis to require Hartley Pensions to buy the investment at the 2015 price. As I've said, Hartley Pensions isn't responsible for the losses that Mr N suffered as a result of the investment in Store First. And in any event, the fair market price has to be a current one.

Mr N referred to a ruling by the Supreme Court regarding s27 of the Financial Services and Markets Act 2000 (FSMA 2000). In summary, s27 may apply where an authorised person makes an agreement with another person in the course of carrying out a regulated activity, which was a consequence of something said or done by an unregulated party acting in breach of the general prohibition (s19 of FSMA). However I don't think that ruling is relevant to the circumstances of the complaint that Mr N has referred to us here – against Hartley

Pensions Limited. This complaint isn't against the original SIPP provider who Mr N entered into his original agreement with; the facts of the complaint against Hartley Pensions are different.

Mr N has told us that he has been trying to contact Hartley Pensions by telephone, but it hasn't been taking his calls. He has also said Hartley Pensions has ignored letters he has sent them.

As explained in my provisional decision, the investigator had asked Mr N whether he would agree to an arrangement going forward where he could have phone contact at set times but that wasn't acceptable to Mr N. I think it's reasonable for the firm to correspond with Mr N in writing – making reasonable adaptations as described. However in order to meet its continuing regulatory obligations it should respond to Mr N and, as I have said, provide assistance in exploring options to sell the investment and close the SIPP. Clearly it's not treating Mr N fairly if it is ignoring his correspondence.

Taking all the above into account, I'm upholding Mr N's complaint in part.

Putting things right

Hartley Pensions Limited should correspond with Mr N and provide all assistance it reasonably can to explore options that might enable the disposal of the underlying investment, and allow the closure of the SIPP.

Hartley Pensions Limited should pay Mr N £300 for the distress and inconvenience caused by its failure to adapt its communications with Mr N appropriately.

Given that I'm not satisfied that Hartley Pensions Limited has been paying due regard to Mr N's interests and actively seeking ways to resolve the matter, I also order Hartley Pensions Limited to pay Mr N £500. This is for the distress the matter is clearly causing Mr N.

My final decision

My final decision is that I uphold Mr N's complaint in part.

I order Hartley Pensions Limited to pay Mr N what I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 11 August 2022.

David Ashley
Ombudsman