

The complaint

Mr H holds a Curtis Banks Limited ('CBL') Self-Invested Personal Pension ('SIPP'); he self manages the SIPP's investments and they are held with a third-party firm; he disputes CBL's instruction (in August 2021) to the third-party to release and remit funds from some of the investments in order to cover outstanding SIPP fees for the 2021/2022 year; he also disputes CBL's increase of the SIPP fees (effective from February 2021); he seeks a refund of the fees he disputes and compensation for the poor service he says he received from CBL (especially, or including, with regards to online access to his SIPP account); he also wishes to transfer his SIPP away from CBL and he wants CBL to waive its transfer out fee.

What happened

One of our investigators looked into the complaint and concluded that it should be upheld, but not to the extent that Mr H has claimed. The investigator mainly found as follows:

- CBL wrote to Mr H on 10 December 2020, giving notice of the fee increase due to take effect from February 2021. The notice gave him until 14 March 2021 to transfer his SIPP to a new provider, with a waiver of CBL's transfer out fee, if he was unhappy with the increase. The notice was correctly address and there is no evidence to show that it was not sent to Mr H.

[Mr H says he did not receive this notice in the post, that the use of post conflicted with CBL's routine use of email correspondence, that no email notice of the fee increase was sent to him, that it is unreasonable for him to be faced with the consequences of CBL not sending the notice or for it being lost in transit, that there is also evidence that it was wrongly addressed (the copy from CBL's records wrongly describes the town/locality of residence), so the notice was not validly issued, the fee increase applied to his account was/is equally invalid and, for all these reasons, the increased fees should be refunded and the transfer fee waiver should be extended to cover his present wish to transfer his SIPP. The investigator's view was that the address as stated in the notice leads, in an online search, to Mr H's residence and that the same applies to a royal mail search on the postcode in the notice, so the notice was correctly addressed.]

- CBL's correspondence of 10 December 2020 satisfied its obligation to give appropriate notice to Mr H about the fee increase in February 2021. It did nothing wrong in this respect and Mr H's complaint should not be upheld in this respect.
- On 19 August 2021 Mr H received CBL's email about an outstanding invoice and SIPP fee of £492 that was due for payment. The email said he had 30 days, from then, to make the payment and that if no payment was made CBL would instruct the release of funds from the SIPP's investments to cover the fees (and to maintain the required minimum of £1,000 cash in the SIPP bank account). It was entitled to do this under its Order of Disposal ('OD') policy. By 2 September, and for this purpose, CBL had instructed and received funds (totalling £1,462.73) released from the SIPP's investments. On 16 September 2021 Mr H responded to CBL's email, he said he wanted to transfer his SIPP away from CBL because the fee increase was applied

without his knowledge, so no withdrawal of funds from the SIPP's investments should be made whilst he arranged the transfer. He complained on 3 October 2021 having received no reply from CBL.

- The OD policy refers to the 30 days' notice provision, where cash (and the minimum required in the SIPP bank account) is outstanding and needed for liabilities in the SIPP. This covers the 30 days' notice given in CBL's email of 19 August. However, CBL acted to release funds from the SIPP's investments before the notice period ended. The period ended on 18 September, yet CBL had already instructed and received the released funds on 2 September. CBL was wrong in this respect. Mr H's complaint should be upheld in this respect.
- Despite Mr H's email of 16 September, he provided no instruction on how he intended to make the outstanding payment. As such, it is likely CBL would have instructed the release of funds from the SIPP's investments on or after the notice expiration on 18 September. Nevertheless, this means the SIPP's investments could have suffered a financial loss from the funds being released earlier than they would have been released, so CBL should calculate this and compensate Mr H for any such loss.

CBL disagreed with the partial upholding of the complaint. It argued that the initial invoice for outstanding fees was sent to Mr H on 1 August, so the relevant 30 days' notice period ran from then and had expired before it instructed and received the funds released from the SIPP's investments. The investigator disagreed and referred to evidence that the notice period expressly ran from CBL's notice email of 19 August.

Mr H disagreed with the investigator's rejection of the first part of his complaint and he asked for a review. His position is still based on his arguments about the December 2020 notice. He made submissions for the ombudsman's attention which included the same arguments and which commented on how, unlike the other firms he has dealings with, CBL does not update/verify accuracy of his personal details and does not send email notifications of important information. He says he is also unhappy that his email to CBL of 16 September remains largely unanswered.

The matter was referred to an ombudsman.

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.

The terms and conditions for the SIPP provide that they can be amended, including terms about costs increases, by written notice to the SIPP holder. Under these provisions, CBL was/is required to provide at least 30 days' written notice. If the relevant change has a significant unfavourable effect on the SIPP holder – and if the SIPP holder does not accept the change – they also says CBL will waive its transfer out fee where it receives a discharge form from the SIPP holder within three months of the notice of amendment.

In Mr H's case, CBL's notice of 10 December 2020 was issued around a month and a half before the fee increase became effective, so it gave more written notice than the minimum 30 days. It also gave just over three months, between 10 December 2020 and 14 March 2021, for those who disagreed with the increase to transfer out with the transfer fee waiver. This complied with the SIPP's terms about such a waiver being triggered where a change is unfavourable to the holder and s/he expresses a wish to transfer out.

Overall, on balance and for the reasons summarised above, CBL did nothing wrong in terms of the fee increase notice that it issued – the fee increase, in itself, was also within its reasonable commercial discretion and I have not seen evidence that it went beyond that. The next consideration is the effects of the increase and of the notice on Mr H. His key arguments on these issues are that he did not receive the notice, it was wrongly addressed (which, he says, is probably why he did not receive it), CBL should have coupled any posted notice with email notice and, as such, the fee increase did not validly apply to his SIPP. He also says the transfer fee waiver period should be extended to the present, or should be applied presently, for him.

The relevant requirement was that CBL give notice to Mr H. Even if it usually engaged in email correspondence with him, there is no available evidence that says it was wrong to send him notice by post. Indeed, the terms for the SIPP permitted postal correspondence. I also have not seen evidence that Mr H applied settings to the SIPP that stipulated email *only* correspondence, that asked for duplicate email correspondence of postal notices or evidence that he gave CBL prior instructions to provide either of these at the time.

The address used by CBL in the 10 December 2020 notice was Mr H's home address. His dispute relates *only* to the use, within the address, of the word "North" to describe the locality. He says the word "North" does not exist in the town's name. Every other part of the name and address on the letter, including the post code, is not disputed and is accurate. As the investigator pointed out, application of the post code to Royal Mail's post code finder search leads to Mr H's address. Overall, I am satisfied that the notice was correctly addressed and sent to Mr H on the above date. That notice was deemed issued upon being sent. CBL cannot reasonably be held responsible for transit of the letter, which was outside its control. Whilst I acknowledge that Mr H says he did not receive it, the fair conclusion to draw remains that the notice was issued to him on 10 December 2020, was valid and was effective from that date.

As the notice was valid and was effective from the above date, the transfer fee waiver offered within it was available only for the specified limited period, which has since ended. In the absence of a wrongdoing by CBL in this aspect of the case, I do not find a basis on which it is obliged to extend the waiver period for Mr H or to offer a fresh waiver to him.

I do not propose to speak for CBL in response to Mr H's point about his email of 16 September 2021 being unanswered, and I do not state or suggest a defence on its behalf in this respect. However, the sequence of events suggests the email's main contents were arguably redundant at the time. The email shared his intention to transfer the SIPP and said no funds should be released from the SIPP's investments. If the former was stated in the context of the transfer fee waiver period, that had expired months earlier; and with regards to the release of funds from the investments, that had been done a fortnight earlier. Of course, the email was in time to respond to the notice about releasing funds for the outstanding payments and, as I find next, CBL was wrong to act before that notice had ended. The point I make about redundancy is that, as a matter of fact, Mr H's instruction not to release funds happened after funds had already been released.

I agree with the investigator's finding on CBL's challenge. Its notice of 19 August 2021 expressly stated that the 30 days period began from the date of the notice, so it did not begin on 1 August and the release of funds that CBL had instructed and received by 2 September happened more than two weeks before the notice expired. CBL acted wrongly and prematurely in this respect. In the next section, I set out what CBL must do to calculate and pay any arising compensation to Mr H because of this wrongdoing.

Putting things right

On 2 September 2021, and due to CBL's action/instruction, invested funds in Mr H's SIPP were prematurely released from the relevant investments. Evidence shows that the amount released was validly due for the outstanding fees and the cash holding requirement in the SIPP, so the issues to consider are the premature timing of the release and whether (or not) such a release would have been necessary if the full 30 days' notice period had been allowed to run (and end).

Mr H's communication of 16 September 2021 made no mention of a plan to make the outstanding payments (fees and cash holding) into the SIPP. It went as far as to say no funds should be released from the investments, but not as far as to confirm his plan for the outstanding payments. I have not seen evidence, from between this date and 18 September, of any such plan or action on his part. As such, I consider it more likely (than not) that no payment from him would have been made by 18 September, that the notice would have expired on 18 September and that CBL would then have exercised its right to release funds from the SIPP's investments for the outstanding payments. On balance, this would probably have been instructed on the following date – allowing all of 18 September for the last date for compliance with the notice.

In the above context, the period to redress is defined and limited to the time between 2 September 2021 (when the funds were prematurely released) to 18 September 2021 (when the funds would have continued to remain invested, but for the premature release). I order CBL to calculate redress as I set out below, and I order Mr H to assist by providing CBL with all information relevant to and required for the calculation that CBL does not already have. To compensate Mr H fairly, CBL must:

- Calculate the total value, as a matter of fact, of the SIPP's investments on 18 September 2021 – the 'actual value'.
- Calculate the total value that the SIPP's investments would have had on 18 September 2021 had £1,462.73 not been released from it on 2 September 2021 (and had that sum remained invested between both dates) – the 'fair value'.
- If the actual value is greater than the fair value, no compensation is payable. If the fair value is greater than the actual value, CBL must pay the difference to Mr H in compensation.
- Pay the compensation into Mr H's pension plan, to increase its value by the amount of the compensation. The payment should allow for the effect of charges and any available tax relief. The compensation should not be paid into his pension plan if it would conflict with any existing protection or allowance. If the compensation cannot be paid into his pension plan, pay it directly to him. Had it been possible to pay it into the plan, it would have provided a taxable income, so the compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid. The *notional* allowance should be calculated using his actual or expected marginal rate of tax at his selected retirement age. For example, if he is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. If he would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.
- Provide calculation of the compensation to Mr H in a clear and simple format.

compensation limit

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £150,000, £160,000, £350,000, £355,000 or £375,000 (depending on when the complaint event occurred and when the complaint was referred to us) plus any interest that I consider appropriate. If fair compensation exceeds the compensation limit the respondent firm may be asked to pay the balance. Payment of such balance is not part of my determination or award. It is not binding on the respondent firm and it is unlikely that a complainant can accept my decision and go to court to ask for such balance. A complainant may therefore want to consider getting independent legal advice in this respect before deciding whether to accept the decision.

In Mr H's case, the complaint event occurred after 1 April 2019 (it happened in 2020) and the complaint was referred to us after 1 April 2020 (it was referred to us in 2021), so the applicable compensation limit would be £355,000.

My final decision

I uphold Mr H's complaint on the basis set out above, and I order Curtis Banks Limited to calculate and pay him compensation as I have also set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 16 January 2023.

Roy Kuku
Ombudsman