

The complaint

Mr F has complained about the administration of his self-invested personal pension (SIPP) with @SIPP LIMITED (SL). He says SL's actions delayed the setting up of a new lease for property held within his SIPP. As a result, Mr F would like to be compensated for his legal and administration costs, and for the trouble and upset he has suffered throughout.

What happened

The history leading up to this complaint is well known to the parties and has been clearly set out in the investigator's assessment, and so I have only summarised things below.

In November 2018, SL, as Pension Trustees, completed the purchase of agricultural land to be held in Mr F's SIPP. Mr F was already a tenant of the property and at the time of sale there was an existing lease on the land which was due to end on 31 March 2019. Rent was payable on the land from 1 December 2018 until the end of the lease. This was set at around £200 per month.

On 26 February 2019, a property team leader from SL spoke to Mr F. During the call, Mr F asked various questions regarding the land and what he could build on it. Mr F was told he would be sent the section of the pension scheme manual to confirm what is considered permissible in the SIPP.

On 18 March 2019, Mr F emailed SL again asking for details about what he can and cannot do with the land in the SIPP. And on 20 May and 4 June 2019, Mr F asked SL for an update as he thought that rent was due on the land from 1 April 2019. He chased SL for this information again on 26 October 2019.

On 20 November 2019, a holding email was sent to Mr F which explained that his concerns would be passed to the appropriate team for a response.

On 18 December 2019, another property team leader emailed Mr F. He said the lease had expired in March 2019 which is why there had been no demands for the rent. Mr F was then asked for contact details for a surveyor to provide an updated market rental value and the details of a solicitor who he would like to appoint to draft a new lease. Further emails were exchanged, and conversations had, in relation to drafting a new lease, appointing a solicitor, rent terms and the arrears that needed to be paid.

On 12 June 2020, there was a phone call between Mr F and SL. Following this, SL confirmed that the new lease on his land was due to begin on 1 April 2019 with the new market rent of £2,200 per annum, with a rent review frequency of five years. Mr F also wanted a quote from SL's panel of solicitors for setting up a new draft lease.

On 23 June 2020, a property administrator from SL emailed Mr F with a quote for a new lease using a panel solicitor. The email mentions the following in relevant part:

It would be a new lease. but we could make it a renewal lease if the old lease is up to scratch. ... I would think it would be between £750 and £1,000 (excl. VAT and disbursements if any) for this to be executed.

Mr F responded to the quote, saying in part:

The new lease. Unless I am missing something, the new lease, merely needs to be exactly the same as the previous one, with the Landlord/ period of time and rent amount changed. Probably 10 minutes work for you or me! If I am right and the changes are as minimal as I think then quite frankly []'s quotation is offensive! I would like that to be relayed back to them. Please confirm what needs to be done to the lease and I will get my own quote.

The property manager responded that she was unable to comment as it is a legal matter.

On 8 July 2020, Mr F confirmed his appointed solicitor, who I will refer to here as A. Mr F also raised a complaint that SL continued to take administrative fees in 2018 and 2019 despite the slow progress and poor customer service. He also wanted his 2020 fees reduced in recognition of his complaint.

SL issued a final response letter on 16 September 2020. They acknowledged the poor level of customer service between November 2018 to March 2020 where Mr F made 26 calls and had to chase responses. SL also acknowledged that no letter was issued to the tenant to confirm a change in landlord and to confirm how to make a payment of rent going forward. The invoices for the lease were not issued until 22 June 2020, when the lease expired in March 2019. And said this "resulted in a lengthy transaction of now arranging for a backed lease to be put in place." They offered £100 compensation and waived the fee that was to be charged on completion of the new lease.

Mr F didn't accept this offer. He said a 50% refund of the yearly administration fee would be a fairer offer.

SL responded explaining that their SIPP Administration and Property fees were outlined in their fee schedule and the property fee was payable due to the nature of the investment and this fee wouldn't be refunded. Mr F then brought his complaint to this service for an independent review.

Since the complaint has been with our service, emails between Mr F and SL have continued. On 18 March 2021, SL emailed Mr F to confirm a new lease needed to be drafted. Following this, he made a further complaint. He said SL needs to pay for the additional legal costs as they should have known a new lease was needed from the outset as opposed to amending the previous lease.

SL provided copies of the SIPP statements and the account transactions for the property showing fees, including legal costs, taken from September 2018 to February 2022. This showed a solicitor fee was deducted in November 2018 of £1,500 (including VAT). This appears to be for the purchase of the land by the SIPP. No further legal fees are shown as having been deducted. SL said it would consider legal costs if Mr F demonstrated that he paid an additional sum to a solicitor because of further work on the lease caused by SL. Mr F submitted comments from A regarding the lease and legal costs. A said, in relevant part:

When you first instructed me in June last year to deal with the renewal of the lease, I provided you with an estimate of our costs of £750 to £950 plus VAT and disbursements on the basis that we would be preparing a new lease but taking into account the

comparatively modest rent amounts and the short lease term. However, you asked me to prepare the tenancy agreement based on the form of a very simple previous document that dealt with the letting up to that date which consisted of one page of A4 paper.

I therefore revised the estimate of costs to up to £500 plus VAT on the basis that we then adapted the previous lease wording, included required provisions and then submitted the same to [SL]. We then became involved in extensive correspondence regarding particular provisions in the document not least regarding the repairing responsibilities, mindful that the barns were already in poor condition.

After an extensive exchange of correspondence and re-drafting we were then in a position where we felt that the document was in an approved form and it was subsequently reviewed by the line manager of the person acting on behalf of [SL]. As a result of this it became apparent that a more detailed commercial business lease would be required to satisfy the obligations of [SL].

At the time I advise[sic] you that whilst I was prepared to prepare the document it would be upon the basis of my previous estimate of costs ie: costs of up to £950 plus VAT.

...my time recorded costs to date, not including this current correspondence, amounts to £2,670 directly relating to the drafting and redrafting of the documentation and correspondence with all parties.

However, I accept that I have not updated you fully as to the extent of our time recorded costs and in the circumstances I will limit my costs to you in accordance with my our initial and later reconfirmed, estimate of £950 plus VAT.

Our investigator considered things and concluded that SL hadn't acted fairly. He said in addition to its offer to waive the lease fee, SL should increase its offer of compensation to £300 for the poor service provided. However, he didn't consider that an award for legal costs was warranted.

SL accepted the investigator's view, but Mr F remained dissatisfied, especially regarding his view about legal costs, and asked for an ombudsman to consider the matter anew.

While the complaint was being passed to me for a decision, another investigator got in touch with Mr F to discuss his complaint. During this call on 20 July 2022, Mr F confirmed that he had not seen any invoice with legal costs and that he was not aware if he or his SIPP had paid them.

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 have reached the same conclusions as the investigator and for broadly the same reasons.

At the outset I think it is useful to reflect on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the industry regulator, the Financial Conduct Authority (FCA). Instead, this service looks to resolve individual complaints between a consumer and a business. In order to uphold a complaint I would need to find that something has gone wrong and that a consumer has lost out as a result. I would then ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

It's clear to me that Mr F has strong feelings about this complaint. And both parties have provided detailed submissions to support their case which I can confirm I've read and carefully considered. But I've not provided a detailed response to all the points raised in this case. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've taken into account all submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

It is not in dispute that the level of service provided by SL was not what it should have been. SL offered £100 for the trouble and upset this caused and agreed to waive the fees associated with the new lease.

I understand that Mr F would like to have more of the administrative fees he pays for his SIPP refunded, but like the investigator, I don't think this would be appropriate. I've had a look at the fee schedule for Mr F's SIPP. Having done so, I note that the negotiation and implementation of the lease is but one part of the service SL provides as administrators of the SIPP. The fee schedule is multiple pages long and details the cost of each service. And I note that "Lease is its own separate category with its own fee."

SL have offered to refund the fee charged for the lease and in the circumstances, I consider this to be reasonable. And while I know this will disappoint Mr F, I've insufficient evidence to conclude that fees unrelated to the lease should also be refunded. As explained in the Fee Schedule these fees would always have been charged a result of the SIPP and investments held within it.

Mr F also feels that due to the errors caused by SL, specifically its decision to require a new lease after several months of back-and-forth amendments to the previous lease, that he's incurred additional legal fees.

I've considered everything Mr F has said about this, but I don't agree. In the circumstances, I don't think it was unreasonable for SL to make enquiries and amendments to the lease to satisfy itself the transaction was carried out on an 'arms-length' basis and that it met its responsibilities as the SIPP trustee in addition to the property landlord.

I also don't think it was inappropriate for SL to attempt to use the existing lease instead of requiring a new lease from the outset. It is important to note that the solicitor, A, was acting on behalf of both Mr F, as tenant and SIPP member, and SL, as trustee and landlord. And A confirmed he could represent the interests of both without conflict and agreed to proceed with Mr F's instruction to amend the existing lease. It is not within my remit to decide whether this was correct, but it does indicate to me that the solicitor thought it a plausible option at the time he was instructed. Therefore, I can't see it reasonable to expect SL, who aren't legal experts, to have reached a conclusion different to this from the beginning.

It is also clear from the evidence I've been provided that when SL informed Mr F and A that a new lease would be required, there were still important issues over which the parties disagreed. Specifically, they were unable to agree a way forward regarding the "schedule of conditions" relating to the property and whether current photos were acceptable. As stated by A, it was at this point that *"it became apparent that a more detailed commercial business lease would be required to satisfy the obligations of [SL]."*

While I understand Mr F's frustration at the time taken to get a new lease in place, there will usually be some issues that need to be resolved in fairly complex transactions of this nature and it would not be unusual for some matters to need extra work. Mr F was under the belief that minimal changes were needed to the existing lease, but this ignored the fact that the

property was now being held within a SIPP and as a result, different provisions might be needed.

So it is not the case that just because things are not 'seamless' it means that someone should be responsible for any extra time taken and consequently pay redress. It is unfortunately sometimes the case that things do not proceed as smoothly as possible. So should issues need to be clarified or resolved it would not be fair to simply apportion that to SL. What would be necessary is for SL to have made some material or significant error that caused extra cost to be incurred. Bearing that in mind, and for the reasons explained above, I am unable to conclude that to be the case here.

Furthermore, I've seen no evidence that Mr F has actually incurred additional legal fees resulting from the new lease. Mr F told us he'd not received an invoice and wasn't aware if his SIPP had been charged. And having looked at the SIPP statements and property transactions I've found no legal costs deducted, aside from those associated with the purchase of the property in November 2018. Consequently, I've no evidence that Mr F has suffered a financial loss in terms of legal costs, so I can't make a financial loss award even if I thought SL had done something wrong here, which for clarity, I don't.

Nevertheless, when I'm considering a complaint like Mr F's I think about whether it's fair to award compensation for any trouble and upset a business's actions may have caused. This isn't intended to fine or punish a business – which is the job of the regulator. But when something's gone wrong, recognition of the emotional and practical impact can make a real difference. We're all inconvenienced at times in our day-to-day lives – and in our dealings with other people, businesses, and organisations. So when thinking about compensation, I need to decide that the impact of SL's actions was greater than just a minor inconvenience or upset. It's clear to me that this was the case here. In recognition of the trouble and inconvenience it has caused Mr F, I require SL to pay him £300.

Putting things right

For the reasons explained, SL should refund the lease fee it charged Mr F as a result of its delays and poor communication.

SL should also pay a further £300 for the trouble and upset its poor service has caused Mr F.

I think this is fair and reasonable in the circumstances of this complaint.

My final decision

I uphold Mr F's complaint and direct @SIPP LIMITED to compensate Mr F as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 18 April 2023.

Jennifer Wood
Ombudsman