

The complaint

Mr A complains about the delays, fees, additional tax and financial loss he says he suffered in connection with purchasing part of a commercial property through a Self-Invested Personal Pension ("SIPP") set up by Barnett Waddingham LLP ("Barnett Waddingham").

Mr A's brother has also complained about similar issues in connection with his SIPP. I've considered that complaint under a separate final decision.

What happened

The events leading up to this complaint were set out in detail by our investigator in her assessment which she provided to both Mr A and Barnett Waddingham. I don't intend to repeat here what our investigator stated but will instead provide a summary.

Mr A and his brother were directors of a limited company that owned a commercial property. The property had surplus rooms that were let out which generated rental income. Mr A's brother owned the issued share capital of the limited company and was therefore the ultimate beneficial owner of the business and property. The property was encumbered with a commercial mortgage. The brothers wanted to investigate the possibility of restructuring the business. The overarching objective was to use their accumulated private pension savings to purchase part of the property from the limited company to release capital to repay the mortgage – which would then result in the limited company, Mr A's SIPP and his brother's SIPP jointly owning the property.

In August 2019, Mr A contacted Barnett Waddingham to discuss the objective. This led to an exchange of information. Based on the information provided by Barnett Waddingham, Mr A agreed to set up a SIPP to achieve his objective. He agreed with Barnett Waddingham's terms and conditions which included its schedule of fees relating to carrying out various administrative activities.

Barnett Waddingham wasn't authorised to provide regulated financial advice and so didn't advise Mr A on the merits or otherwise of setting up a SIPP for the purpose of achieving his objective. It recommended that he obtain financial advice. After a delay, the SIPP was established on an execution-only basis in March 2020. Once the SIPP had been set up, the process of splitting ownership of the property started. This was completed in October 2020. The outcome was that the mortgage was repaid and ownership of the property split between the limited company, Mr A's SIPP and his brother's SIPP in different proportions.

This complaint

Mr A was unhappy with the service provided by Barnett Waddingham. He complained about several points. In summary, he said that Barnett Waddingham:

- charged administration fees about four times greater than was initially quoted; and

- caused several delays which led to additional financial losses relating to mortgage interest, investment loss, additional tax and the cost of restructuring several leases into a master lease.

To put things right, Mr A wanted compensation to account for all the excess fees charged and additional financial loss he said he had suffered.

Barnett Waddingham accepted that it had caused delays of about nine weeks. In response, it offered to refund to Mr A the SIPP establishment fee and annual administration fee for the year. This totalled £1,140 including VAT. Mr A didn't accept that offer.

Our investigator recommended that this complaint be upheld in part. She concluded that Barnett Waddingham's offer of £1,140 for the delays it had caused was reasonable. She also said that Barnett Waddingham had acted in accordance with the terms and conditions agreed with Mr A at the outset regarding fees except for the fee charged for the property purchase – she thought it had failed to inform Mr A that the fee would be higher than was initially quoted. So, in addition to the £1,140 previously offered by Barnett Waddingham, she said that it should also refund to Mr A the difference between what should've been charged and what he was actually charged, which would result in a refund of £942.60 including VAT. Our investigator didn't uphold the elements of Mr A's complaint about mortgage interest, investment loss, additional tax or the cost of restructuring several leases into a master lease since she didn't think that these were matters for which Barnett Waddingham could be held responsible.

Barnett Waddingham accepted our investigator's assessment and agreed to refund £942.60 including VAT. It also offered to cap its fees for restructuring the leases at two hours which would be £320.00 plus VAT rather than on a time cost basis, as per the terms and conditions agreed with Mr A. It said that its agreement to refund the amount of £942.60 including VAT and capping its fees for the lease work was conditional on Mr A understanding that:

- it remains his responsibility how to structure investment in his SIPP;
- there will be additional costs for any professional fees charged by a solicitor for drawing up the lease and for a RICS qualified surveyor to complete a rental valuation on the property;
- the annual property fee includes holding the property within the SIPP, maintaining records, and carrying out reporting requirements to HMRC and the FCA; and
- any other work in relation to the property falls under additional property related work which is carried out on a time cost basis. This may include such items as rent reviews, lease renewals, paying property expenses, queries from tenants or member, EPC, appointing professionals such as surveyors or solicitors to act on behalf of the SIPP.

Mr A didn't accept Barnett Waddingham's offer. He still felt it had treated him unfairly regarding fees and that he was trapped in an expensive arrangement which prevented him from switching to an alternative provider. He said that he wanted Barnett Waddingham to cover the full cost of restructuring the leases in connection with the property. And he also thought that his complaint point about the tax charge remained valid. Our investigator considered Mr A's additional comments but wasn't persuaded to change her opinion. Since agreement couldn't be reached, this complaint has been referred to me for 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.

When considering what's fair and reasonable, and in accordance with the Financial Services and Markets Act 2000 and the Dispute Resolution section in the FCA's handbook, I need to take into account relevant: law and regulations; regulators' rules, guidance and standards, and codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

I'd like to clarify that the purpose of this final decision isn't to repeat or address every single point raised by Mr A and Barnett Waddingham. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. I've considered all the evidence afresh including Mr A's comments in response to our investigator's assessment. Having done so, I've reached the same conclusion as our investigator for these reasons:

- It's not in dispute that there were some delays in setting up Mr A's SIPP and completing the property purchase. This was due to a combination of factors including additional approval being required because Mr A's SIPP opening value was below Barnett Waddingham's stated £50,000 internal minimum fund value, additional identification being required for anti-money laundering checks and administration delays in processing the application. I think Barnett Waddingham's previous offer to refund the SIPP establishment and annual administration fee for the first year in recognition of the delays is reasonable redress in the circumstances.
- I understand that Mr A is dissatisfied with the fees charged by Barnett Waddingham but, as far as I can see, it charged fees in accordance with what was agreed with him except in respect of the property purchase fee – Mr A was charged a greater amount than he was initially quoted. In response to our investigator's assessment, Barnett Waddingham agreed to refund the difference between what it initially quoted (and accepted by Mr A) and what it charged. This amounts to £942.60 including VAT. I think this is a fair offer. I've taken account what would've likely happened to this money had it been available in the SIPP. Given the relatively low amount, I think it's likely it would've remained in cash and achieved negligible growth since 2020. So I don't think it's necessary for me to consider applying an uplift to this figure to account for any investment loss.
- Mr A wants Barnett Waddingham to waive its fees in connection with restructuring the several leases into a master lease for the property. But the terms and conditions he agreed to at the outset stated that Barnett Waddingham would charge for its work for this on a time cost basis. I cannot compel it to depart from what was agreed. In any event, I don't think it's reasonable to expect Barnett Waddingham to carry out administrative work free of charge. In response to our investigator's assessment, Barnett Waddingham offered to cap its fees for restructuring the leases at two hours which would be £320.00 plus VAT rather than on a time cost basis, as per the terms and conditions agreed with Mr A. I think this is a fair offer.
- Mr A wants Barnett Waddingham to provide compensation for the additional tax of £652.82 he says he's incurred because he missed a tax year-end deadline to pay a pension contribution. That figure is based on a computation carried out by Mr A. I'm not persuaded that the issues complained about prevented Mr A from making a pension contribution. So I'm not persuaded that Barnett Waddingham should be held accountable for any additional tax Mr A says he's incurred.

- Mr A wants Barnett Waddingham to provide compensation because his money was out of the market after he liquidated his pension savings ahead of the switch to the SIPP. The transaction was carried out on an execution-only basis. It wasn't Barnett Waddingham's role to advise Mr A on the suitability or timing of when he should liquidate his pension savings. Therefore, I don't think Barnett Waddingham should be held accountable for the investment financial loss Mr A says he suffered as a result of being out of the market between the period when he liquidated his pension savings and the property purchase being completed.
- Mr A says that he's trapped in an expensive SIPP and will incur additional costs if he switches to an alternative provider. He says that it isn't fair that Barnett Waddingham should charge a fee for restructuring the lease. As noted above, Mr A agreed with Barnett Waddingham's schedule of fees at the outset. I understand Mr A's frustrations, but I cannot direct Barnett Waddingham to waive any fees that he agreed to pay.
- This complaint is between Mr A and Barnett Waddingham about his SIPP. This means that under this final decision I cannot consider the complaint point relating to mortgage interest. This is because the legal charge for the commercial mortgage was in the limited company's name rather than Mr A's name. Any complaint about the mortgage interest would need to be raised under a separate complaint between the limited company and Barnett Waddingham. Therefore, I'm unable to make any finding on this point.
- I sympathise with Mr A. It's clear that Barnett Waddingham was responsible for some delays and made a mistake regarding the property fee charged. But, overall, I'm satisfied that what Barnett Waddingham's offered to do in response to remedy the matter is reasonable in the circumstances.

Putting things right

1. If it hasn't already done so and in line with its previous offer, Barnett Waddingham should refund to Mr A's SIPP an amount of £1,140, representing the SIPP establishment fee and annual administration fee for the year;
2. In addition, if it hasn't already done so and in line with its previous offer, Barnett Waddingham should cap its fees for restructuring the leases at two hours which equates to £320.00 plus VAT; and
3. In addition, in line with our investigator's recommendation, Barnett Waddingham should refund to Mr A's SIPP an amount of £942.60 which is the difference between what Mr A should've been charged and what he was actually charged for the property purchase fee.

My final decision

I uphold this complaint. Barnett Waddingham LLP must redress Mr A as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 5 September 2022.

Clint Penfold
Ombudsman