

The complaint

Mr S says that Curtis Banks Limited (CBL) is responsible for the poor servicing of his Self-invested Personal Pension (SIPP) and the mis-handling of his request to switch his arrangements to an alternative provider. He says this has caused him substantial financial detriment and inconvenience.

What happened

Mr S had a SIPP with Alliance Trust. In 2012 that firm was acquired by CBL. He says ever since he has experienced poor service. He told this Service his fund is currently worth around £6 million, with the principal income coming from commercial real estate. He said that CBL's role in managing his SIPP was essentially limited to regulatory matters and that several other parties, such as surveyors, investment managers and lawyers dealt with the bulk of what needed to be done.

Although Mr S has noted his general dissatisfaction with CBL's service since it took on responsibility for his pension, the initial complaint point that gave rise to his case with this Service was about a delay to the refinancing of mortgages connected to a commercial property investment within his SIPP. Three loans were due to mature on 20 December 2020. Nationwide were no longer offering commercial lending, so the loans needed to be paid-up. The process to refinance the loans started in May 2020 and the matter was finalised on 18 December 2020 within the deadline. Hampden & Co were the new finance provider.

Mr S says that when refinancing, CBL was required to pay fees relating to the valuation report, legal fees and broker fees. He says it failed to do this and that Hampden & Co effectively set-up an overdraft facility related to his SIPP account in order that the bills could be settled. The SIPP repaid Hampden & Co once the refinancing proceeds were received. This caused a delay in settling the refinancing on the property. Mr S also provided other examples of where he says because CBL was slow to pay fees, later invoices were re-issued and paid by his new pension Trustees. He felt that a failure to pay charges due in proper time undermined his professional integrity.

Mr S says as a result of CBL's services not being fit for purpose in December 2020 he initiated the switch of his SIPP to Mattioli Woods (MW). I understand CBL received the necessary forms from him in February 2021, these requested a full in specie transfer of his SIPP. The transfer also included a request to make an interim cash payment of £213,000 to MW from the funds.

CBL accepts it failed to inform Mr S that it couldn't transfer the cash to MW without his SIPP being fully reconciled. Although it said when it sent its instruction was effectively academic, it did offer Mr S redress of £2,241 based on 8% simple annual interest on the sum he'd requested be transferred for the period between 22 January and 11 March 2021. Mr S confirmed £200,000 was finally transferred to MW in February 2022, following his instruction of a solicitor. He also says a sum of around £43,000 remains in the Hampden & Co account despite his requests for it to be released.

Mr S raised a range of other complaint points. For example, his portal SIPP showed various bank accounts, one of which was called Suffolk Life. The purpose of the account appears to have been to take funds from the other SIPP accounts and pay money on. Around £61,000 was paid through this account. He says he was only able to reconcile around £30,000 of movements. But despite repeated requests, he said an explanation or breakdown was not provided by CBL.

Mr S said his quarterly pension drawdown payments from CBL always had to be chased. His September 2020 payment wasn't received until November 2020. His next payment was due in December 2020. He had to hasten this and was told it would be paid in January 2021. But as he'd started the process to switch provider he requested the payments be stopped. However, because there were delays in effecting the switch to another provider, and specifically the freeze on the Hampden & Co account, MW wasn't able to finance his pension payments.

Mr S instructed solicitors and a letter was sent to CBL on 14 December 2021 setting out his claim. In addition to the matters I've already outlined this raised other concerns including about the inaccuracy of its record keeping; the poor collaboration between different teams; and overcharging. It also identified financial losses and costs it said he'd incurred as a result of CBL's failings.

CBL didn't respond to Mr S's solicitor. Its final response had already been issued to him on 16 August 2021. In this it apologised for certain matters it had got wrong. For example it acknowledged problems with the move of work between two of its offices that led to complications in the process of refinancing his SIPP properties. Although it noted this had completed within the deadline. It accepted its failure to deal with his request for an interim cash payment in January 2021 – here it offered redress of £2241. It also accepted it had failed to keep Mr S properly informed and so also offered him a payment of £500 in recognition of the trouble and upset it had caused.

Mr S wasn't happy with CBL's offer. He thought the compensation should be far higher and that he should have access to the £43,000 still frozen in the Hampden & Co account.

An investigator considered his case, and while she thought CBL should increase its award to £1250 for the trouble and upset it had caused him, she thought that would be sufficient. She noted for example, that the issue of frozen funds appeared to be a matter of deadlock between the parties. She didn't think CBL were being unreasonable in requiring the settlement of all other matters prior to its release. Mr S disagreed he said his losses were nearer £50,000.

As both parties couldn't agree with the Investigator's view, Mr S's complaint was passed to me to review afresh. I issued my provisional decision last month. As neither party has provided any new evidence or arguments, I see no reason to depart from my initial findings and conclusions.

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.

Where there's conflicting information about what happened and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what's most likely to have happened.

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.

I'm upholding Mr S's complaint, but not to the extent he'd like. I'll explain why.

I've considered the extensive regulation around transactions like those performed by CBL for Mr S. The FCA Handbook contains eleven Principles for businesses, which it says are fundamental obligations firms must adhere to (PRIN 1.1.2 G in the FCA Handbook). These include:

- Principle 2, which requires a firm to conduct its business with due skill, care and diligence.
- Principle 3, which requires a firm to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
- Principle 6, which requires a firm to pay due regard to the interests of its customers.
- Principle 7, which requires a firm to pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

So, the Principles are relevant and form part of the regulatory framework that existed at the relevant time. As such, I need to have regard to them in deciding Mr S's complaint.

I note Mr S's complaint has evolved, expanded and focussed in on particular issues at different stages of his journey with us. Having reviewed his case file I found the letter from his solicitor to CBL of 14 December 2021 appeared to broadly summarise his concerns. Those were:

- i. The delay of the switch from CBL to MW as his new SIPP provider.
- ii. A failure by CBL to release funds from the Hampden & Co account, which was requested in January 2021 (accepting that £200,000 was paid over in February 2022).
- iii. A requirement for an audit trail showing the £61,000 disbursements paid through the Suffolk Life Annuities account, and rationale for such.
- iv. A requirement for a full audit of the VAT position.
- v. Invalid requests for payment of charges that had already been settled.
- vi. Repayment of 'over-payments' of scheme fees, which had continued to be levied despite the level of service provision.
- vii. Correction of over-paid building insurance premium, following transfer of a property in June 2021.
- viii. Failure to pay his drawdown pension.
- ix. Payment of compensation for associated financial loss/charges.
- x. General poor servicing and handling issues.

From subsequent exchanges, I deduced certain of these matters had been substantively resolved. In particular Mr S has now seen a schedule which shows itemised payments from the Suffolk Life Annuities account (III). Exchanges between the parties in December 2021

with agreement about the VAT liability to be paid to HMRC (IV); reconciliation of bills already settled (V); and pro-rata refund of building insurance (VII).

Further Mr S's response to the Investigator's view of 3 August 2022, and his subsequent communication to CBL of 11 October 2022 suggested the important outstanding issues for him were the: the freezing of his Hampden & Co account for an extended period, and the consequential investment refinancing costs; (II); excessive and or incorrect scheme fees from CBL (VI); and exceptional costs he apportions to CBL, from his solicitor, surveyor and his new SIPP provider, which he asserts are beyond the usual costs of switching SIPP providers (IX).

I asked Mr S to confirm my understanding of the current position. He responded in some detail, but much of what he provided was already on file. I've not read anything from him that makes me think my interpretation isn't broadly correct. He did provide information about how he estimated the £50,000 loss figure he asserted in response to the Investigator's view:

"The extraordinary costs of transferring my pension to Mattioli Woods over and above what would be normal and reasonable may be considered under the following headings:

A – Freezing the £243,000 cash in the Hampden and Co account since December 2020. This has not only resulted in my not being able to receive a pension, it has also meant that additional costs have been incurred as the SIPP has had to borrow money to honour its obligations regarding investments already committed to.

B – My own business has incurred costs in terms of time well in excess of what might be reasonable in dealing with Curtis Banks. My business ...charges for advice at £250/hour...We have incurred enormous time costs that have prevented me from allocating resources to my normal clients over the last two years as my office has had to allocate well over 200 hours of time (certainly an average of more than 2 hours a week).

C – The new Trustees, Mattioli Woods have billed me this year the following:

- 26th February 2021 - £1,074.00 inc VAT – for dealing with the transfer and set up of the new SIPP...with a new bank account and completing the required procedures.*
- 31st May 2021 - £6,421.80 inc VAT - £351.50 of this fee related to the annual scheme charge. The balance was based on an hourly rate cost of dealing with Curtis Banks which for the reasons given above was both time consuming, frustrating and endless.*
- 30th September 2021 - £5,722.80 - £2,269.00 related to the annual scheme fees and the balance of £2,500 plus VAT was again based on an hourly rate cost of dealing with Curtis Banks which for the reasons given above was both time consuming, frustrating and endless. Please note, Mattioli Woods reduced this additional fee by 20% as a gesture of goodwill as they recognise how difficult it was to deal with Curtis Banks.*

D – I have had to appoint...solicitors at an initial agreed fee of £1,800 to pursue a claim against Curtis Banks to release the frozen funds of £243,000 which are being held against invoices already paid and to seek compensation.

In addition, there has been the cost of the delay in providing funds for investment."

I'll now summarise my thinking on the substantive outstanding matters in this case.

The freezing of Mr S's Hampden & Co account, and the VAT issue and investment opportunity loss

Something Mr S told us is important context for my consideration here:

“Managing a SIPP for a high net worth individual does not require investment management of the individual assets held. In my case, my lawyers are..., a first class London firm of lawyers; property owned by the fund in Winchester is managed by..., a leading firm of chartered surveyors; independent valuations are carried out by..., again, a leading firm of chartered surveyors; shares are held by ...; property investment is managed by ...who have a first class record...; one of the LLPs is managed by..., who is advised on the legal side by ..., a leading provincial firm of lawyers. Consequently, the role of the Trustees is regulatory, it is not to try and manage the day to day assets and this was certainly the model adopted by Alliance Trust where I had a first class manager...”

There were several parties with different roles and responsibilities which had some dealings, either directly or indirectly, with Mr S's SIPP interests. So, I'm mindful this wasn't a simple matter of dealings between him and CBL. Inevitably, the more parties there are involved in transactions the greater the potential for communication issues to arise.

In October this year Mr S told CBL:

“You haven't yet provided Mattioli Woods with the transfer statement which is something required to finalise the transfer. This whole process has taken nearly 2 years and incurred very substantial costs and loss of income to the Trust as you froze some £240,000 cash for a period of almost two years. This also required me to refinance some investments at additional cost.”

Mr S initiated the switch of his pension provider in December 2020. I understand the necessary completed paperwork was received by CBL in February 2021. But it wasn't until February 2022 that the bulk of his cash fund (£200,000) was released. So a period of around one year, not two as he asserts.

CBL has accepted there was a delay in it informing Mr S it couldn't transfer the cash to MW without his SIPP being fully reconciled. It said:

“The property held an external property manager and we had to receive information from this third party to reconcile the account. We are unable to have estimated this as we were not in a position to know exactly what the property manager had invoiced for.”

“When we first received the client's instruction for an interim payment, we were not aware that this couldn't be made until the account had been reconciled and therefore we should have sent an instruction to Hampden and Co within five working days. Had this happened, we would have known earlier that an interim payment wasn't viable and this was only noted once we did send our instruction on 11 March 2020. ...However, when we sent the instruction is a moot point as we would still be unable to make the interim payment.”

Part of the reconciliation process required related to VAT returns that needed to be completed by CBL for Mr S's SIPP. This matter appears to have been complicated by the failing relationship between the parties. Asked why he thought it took until December 2021 to agree a position on VAT, Mr S said:

“Total and absolute incompetence by Curtis Banks. The Managing Agents issue VAT returns in respect to money collected from Tenants every quarter to enable the SIPP to pay the VAT. If you look at the information attached and understand that filing VAT returns is really quite straightforward when you have so few entries in any one quarter, there really is no excuse. I personally file VAT returns both in my own name and for the businesses I run every quarter and we are never late. Indeed, HMRC normally don't give you even a few days grace, let alone two years. This process of providing information to the Trustees has gone on for years and years. And there was never previously an issue. I believe this is all part of Curtis Banks trying to transfer everything to Ipswich and losing all the data in the process...”

But it's clear Mr S was also concerned about the time it was taking for CBL to pay invoices for various professional fees related to management of his SIPP interests, he felt this was a reputational issue. And so he made arrangements with Hampden & Co and MW to pay these. There was a breakdown in communication. CBL says:

"The invoices had already been accounted for in previous submissions and when we were notified that these had been settled elsewhere, we were required to then change the VAT submission."

"The original invoices should have been paid from the Curtis Banks SIPP and as such were added to our system. Unfortunately, I think due to liquidity issues these invoices were unpaid and therefore we were confirming to the client that these were outstanding. We were subsequently informed that the client had arranged for the invoices to be reissued and settled by the new SIPP provider. Without being privy to this information we would still show these as liabilities to the SIPP and were requested in line with our procedure. I can see that once we were told that the invoices had been settled by a third party these were removed from our ledger."

"Any invoices issued while the property was held at Curtis Banks should have been settled by us, I am unable to speak in regards to why the new provider agreed to settle invoices that were originally issued to Curtis Banks."

The coming together of the parties in terms of the respective understanding of what had happened, appears to have taken place in December 2021. This seems to have provided a basis for CBL's consideration of the position of Mr S's Hampden & Co cash fund and enabled the release in February 2022 of £200,000. In regard to this matter it said:

"Ordinarily, during a transfer out, we would close all accounts held in the SIPP and cash would be returned to Curtis Banks for onward transfer to the new provider."

"In this instance, the client was a co signatory on the account and did not want for the cash to return to Curtis Banks and instead have it moved directly to the new account issued by the new provider. Having a linked external bank account to the property is not within our usual remit, along with transferring cash in specie between accounts, as we would not class cash as a transferable asset."

"This caused a stalemate between all parties, with the client refusing to sign and our need for the cash to be returned to the SIPP for final reconciliation. Our Group Legal Team had discussions with the client and it was agreed that £200k could move between the accounts if the client was willing to sign for this. This was outside of our standard process and was a gesture of goodwill on our part, in an attempt to help the client."

Mr S says by freezing his funds CBL caused him a loss in terms of investment opportunity. There's certainly an argument to be made in relation to the period between February 2021 and February 2022 for the £200,000.

The problem for Mr S is that he hasn't evidenced when he notified CBL of the alternative arrangements he was making for payment of invoices relating to his SIPP, which it had already catered for in terms of his VAT return. And its agreement to this. Unless he can overcome this hurdle, I don't think he can carry his argument for investment loss because he didn't take steps to mitigate this.

The problem for CBL is that even though it was catering for the invoices on Mr S's SIPP VAT return, it hadn't paid the invoices which were many months old. I've seen some of the communications between the parties, where he is proactive and it is somewhat unresponsive. There also appear to have been issues in communications between its different offices, which are not a matter he should need to concern himself with.

So, I've decided to direct CBL to refund Mr S 50% of his basic annual SIPP administration fees for 1 year. I don't think it would be reasonable to go beyond this given that it was still providing a service for his SIPP while it was awaiting transfer to another provider.

Mr S is still in dispute about the residual sum of around £43,000 which remains in the Hampden & Co account. I've reviewed CBL's terms and conditions concerning the switch of pensions. Section 14 is relevant and says (bolding is my emphasis):

"You can request us by written notice to transfer the value of your SIPP to another registered pension scheme...at any time, subject to applicable legislation and HMRC rules. This will be done as soon as is reasonable following your instruction."

"A transfer out may be made in cash or in specie..."

"We will only complete a transfer out once payment of all fees and costs have been paid. If you instruct us to transfer out in specie and there is inadequate cash within your SIPP to settle any outstanding fees or costs, we reserve the right to sell investments in accordance with our order of disposal policy, a copy of which is available on request, in order to cover the payment of those fees or costs prior to completing the transfer out."

"Any annual fee already paid or due to be paid to us prior to a transfer out being requested will not be rebated either in full or in part.."

CBL has stated:

"The current state of play is that we still require for the remaining cash to be moved from Hampden and Co back to Curtis Banks to allow for prefunds on the clients account to be repaid and for the final reconciliations to happen but the client is still refusing to sign."

Mr S initially failed to respond to the Investigator's question as to why as a co-signatory on his Hampden & Co account he was refusing to sign for the release of funds back to his former SIPP, and whether this was related to his dispute with CBL about what monies it was due. He's now confirmed this was the position, saying:

"Given that this has now been some two years, during which time I have incurred extraordinary costs, I should see no reason why I should instantly accept their derisory offer."

I agree with the Investigator here when she concluded, generally speaking, money owed should be paid. The pursuit of a complaint, and its outcome one way or another, shouldn't interfere with settlement in this case. It follows that I'm not making an award in respect of the £43,000, for example for lost investment opportunity while funds have sat in cash.

Excessive and or incorrect scheme fees and exceptional costs arising from CBL's failings

In October this year Mr S wrote to CBL saying:

"Curtis Banks also seem to have paid themselves very substantial fees over the last 18 months before transfer, potentially up to £33,000 whilst indicating in an annual statement that the fees were only £5,500. This is part of a more general complaint that there is no financial transparency. In addition, Curtis Banks continue to invoice me for annual fees - their most recent invoice was issued on 1st June 2021 for the period up to 31st May 2022."

CBL responded saying:

"We are unsure where the client is getting the £33,000 from in regards to our fees. All fees charged are available to the client on his SIPP portal, with confirmation of our fees available on our website. I can confirm fees charged from 2020 to date are £11,135.67. This covers

fees for three years, for a SIPP that holds 2 properties. However, should Mr S provide evidence of the fees he is noting in the £33,000, I will happily investigate this further.”

The schedule of fees levied by CBL, which Mr S has seen, appears to bear out CBL’s testimony here. It isn’t our role to provide a checking service, but having reviewed the fees charged since 2020, I can’t see there’s anything obviously wrong. I also note CBL’s offer to Mr S to investigate any outstanding areas of disagreement on charges.

I understand that part of Mr S’s argument on fees, for example in relation to the property transfers, is that all the work was done by other parties like MW and the lawyers. While I’m sure those businesses carried out work on his behalf, he hasn’t demonstrated CBL did no work in these areas nor that it wasn’t entitled to charge for such in accordance with the agreement it had struck with him.

I also appreciate that Mr S’s general dissatisfaction with the service he received from CBL leads him to conclude he should receive a refund. I’ve already set-out how I’m approaching that matter.

In responding to the Investigator’s view, Mr S asserted a financial loss or costs arising from CBL’s failings amounting to £50,000. This included:

- Costs arising in his business because he says he had to allocate resources to dealing with CBL rather than his normal clients. He estimated well over 200 hours of effort had been expended, chargeable at £250 per hour – so around £50,000.
- Charges from MW for the transfer of his SIPP to the new arrangement, scheme fees and costs arising in its dealings with CBL. The headline cost here was said to be around £13,000.
- Solicitor fees of around £2,000 arising from his instruction to pursue CBL for release of his frozen Hampden and Co account funds.

Mr S brought his case to this Service as a retail client of CBL. The costs he says his business has incurred through the use of its resources in furthering his private interests isn’t a matter I can properly consider.

With regard to his claim about the costs arising through his arrangement with MW, as the Investigator noted there were always going to be costs associated with the switch of his pension and the establishment of a new SIPP. He hasn’t done enough to demonstrate that:

- i. These costs were exceptional in the circumstances; nor that
- ii. Even if the costs were higher than would usually have been the case, this was the sole responsibility of CBL. For example, as I’ve already found, the delay in transferring the cash from the Hampden & Co account was largely due to the reconciliation exercise required beforehand.

Regarding solicitor’s fees Mr S incurred in securing the release of the bulk of his Hampden & Co cash fund. I don’t have sufficient evidence to suggest he wouldn’t have made the same progress without legal input. I think the unblocking of this matter related more to agreement of sorts being reached with CBL on the position on VAT returns in December 2021 and visibility on the scale of likely outstanding remaining fees and charges.

I’m mindful this matter was out of the ordinary. CBL also had to engage its legal team and incurred higher overheads as a result. And the agreement reached appears to have been a compromise between the parties, made with a degree of goodwill on the part of CBL. So, I’m not providing for the re-imbursement of Mr S’s legal costs.

Further, it's of note this is a free Service. And so there's no need for individuals bringing complaints to incur professional costs in relation to the matters in dispute. While people may choose to do so, such costs in most circumstances won't be re-imbursed.

Other matters

I agree with the Investigator when she found that Mr S shouldn't have had to chase CBL for the payment of his pension each quarter. Subject to matters such as liquidity, which doesn't appear to have been a problem with Mr S's SIPP, payments should be made on time. However, as Mr S started the switching process and cancelled the pension drawdown arrangement, I don't think CBL made an error in not making further payments.

I understand the point Mr S makes about there being insufficient funds in his MW SIPP due to issues with the move of his cash funds, but the circumstances surrounding that matter has already been dealt with.

Putting things right

Mr S started the process to switch his SIPP in December 2020, we are two years on and matters are still outstanding. Curtis Banks Limited is responsible for several failings including: inaccurate record keeping; a failure to pay invoices; and sometimes poor communications between its offices. These things caused Mr S considerable frustration and led to him to find work-arounds.

I agree with the Investigator when she concluded CBL had provided Mr S with a poor level of service throughout the switching process. This was a complex transfer and it should've done more to have kept him informed, provided the relevant information, and responded to his requests.

In considering compensation I'm also mindful of Mr S's own actions, and those of other third parties, in influencing how events unfolded.

I see no reason to disturb Curtis Banks Limited's existing offer to Mr S to pay him £2,241 for what it said was a delay in informing him about whether a partial transfer of funds from his Hampden & Co account was possible.

I also require Curtis Banks Limited to reimburse Mr S 50% of its standard annual administration fee for one year, reflecting on the standard of service it provided, but also recognising that it did still undertake considerable work for him.

Turning to the distress and inconvenience suffered by Mr S. When I'm considering a complaint like his, I think about whether it's fair to award compensation where failings have occurred, separate from pure financial loss. 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. When thinking about compensation, I need to decide that the impact of Curtis Banks Limited's actions was greater than just a minor inconvenience or upset. It's clear to me that this was the case here.

Curtis Banks Limited should pay Mr S an additional £750, on top of the £500 award it had already made for the distress and inconvenience it has caused through the things it got wrong in dealing with his SIPP arrangements over an extended period of time.

My final decision

For the reasons I've already set out, I'm upholding Mr S's complaint. I require Curtis Banks Limited to put matters right in the way I've directed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 6 February 2023.

Kevin Williamson
Ombudsman