

## The complaint

Mr H complains about the investment losses he says Suffolk Life Pensions Limited trading as Curtis Banks Pensions (Curtis Banks) caused, when an instruction to reduce the income payments he took from his self invested personal pension (SIPP) was carried out, but his investment manager (IM) wasn't made aware of the reduction and continued to sell assets to provide the original higher income – which simply built up in the cash reserve. He wants compensation for the growth he would have received had that excess income been invested in line with the rest of the funds.

## What happened

Mr H has held his SIPP, which is administered by Curtis Banks, since 24 May 2018. He receives monthly income payments from the SIPP which are generally funded by transfers from his IM – who is responsible for the overall investment strategy of the plan. Mr H also has a separate financial adviser with responsibility for the plan.

In January 2020 Mr H asked Curtis Banks for his monthly income payments to be reduced to £4,000 from £6,500 with effect from April 2020. He subsequently requested they be reduced to £1,000 from October 2020. These payments to Mr H were reduced accordingly but Curtis Banks didn't make the IM aware, so it continued to transfer funds to the SIPP – which it said came from the disinvestment of assets, to cover the original income amount required. This meant that the cash reserve of the SIPP continued to accrue, and Mr H says the IM therefore had less funds available to invest on his behalf.

On 11 December 2020 the IM asked Curtis Banks to amend the payments, but it established that Curtis Banks hadn't previously received the request. So it asked for £27,000 to be transferred to its portfolio from the plan (which was the surplus cash reserve) and decided to raise a complaint about the income payments. It said Mr H had requested his income to be reduced to £4,000 per month in April and £1,000 per month in October 2020, but while the payments had been reduced to Mr H, the IM had continued to fund the SIPP to ensure the original sum of £6,500 per month was met. The IM said this meant the money in the cash reserves could have been invested as it didn't need to disinvest assets to continue to cover the original level of income Mr H had been receiving.

Curtis Banks accepted that an error had occurred and said it had corrected this and also sent the surplus cash that had been requested – at no cost to Mr H. But it didn't uphold the complaint about the investment loss. It said there had been a high cash balance in the SIPP during this period which was available to invest as required. It also said that no funds needed to be disinvested to provide the surplus cash, so it didn't think any financial loss had occurred.

Mr H's IM said the cash balance in the SIPP had often been run at low levels during this time and noted that an income payment of £6,500 in July 2020 could only have been made if it disinvested some of his funds. It said it was for Curtis Banks to prove that it wouldn't have invested the missing funds in line with the rest of Mr H's portfolio.

Curtis Banks said there was no evidence that any of the SIPP funds had to be disinvested simply in order to facilitate Mr H's income request – or that the cash balance would have been invested instead. It said it couldn't be held responsible for any perceived investment losses during this time. It said it had refunded the 2020 annual drawdown fee of £150 plus VAT back to the SIPP.

But Mr H said he had lost the opportunity to invest over £31,500 which the IM calculated would have provided around £5,278 in growth. So he brought his complaint to us where one of our investigators looked into the matter. She said the complaint should be upheld. She looked at the income which had been required each month and compared this with the disinvestments and concluded that there were three months when funds could have remained invested. She said Curtis Banks should compare the value of the SIPP now with what it would have been without the disinvestments.

Mr H accepted the recommendation but suggested an alternative redress formula which looked at the actual performance of the fund on a monthly basis to establish an average rate of return.

Curtis Banks didn't agree. It made the following points:

- It doesn't expect to see large disinvestments over and above what is necessary to support income withdrawal. It didn't think the IM sold investments to support the monthly transfers alone.
- It cited examples of where the units of an investment were sold in far higher amounts than was required to cover the monthly income. It said in July 2020 for example, 712 units of a share were sold when in fact only 144 were needed to meet the balance of income that was required.
- It gave a similar example for August 2020 and said that after that time there was a significant cash surplus which was beyond that required to support the income needed.
- When the excess cash was refunded to the investment manager in December 2020 it wasn't immediately reinvested. Indeed, further sales took place the following month which increased the cash surplus.
- The account has generally operated with a large cash surplus which it thought didn't correlate with the timing of funds being requested.
- It was sorry for the error in not making the IM aware of the amendment to Mr H's monthly fund request, but it didn't think it had caused any financial loss.

The investigator remained of the view that some investments needed to be sold simply to pay for the higher level of income payments. And she thought her redress recommendation was fair because it put Mr H as close as possible to the position he'd now be in without Curtis Banks' error and without using the benefit of hindsight. But as both parties disagreed with the outcome and no resolution could be found the complaint was referred to an ombudsman – so it was passed to me to review.

### *My provisional decision*

In my provisional decision I agreed with the investigator that the complaint should be upheld. But I thought a different redress formula should be used to establish the extent of Mr H's loss. I made the following points in support of my findings:

- There was no dispute that Curtis Banks hadn't told the IM about Mr H's request to reduce his income payments. Curtis Banks had apologised for its error, corrected the payments, and had refunded some fees.
- But the issue of whether Mr H would have benefitted from investment growth on the amounts that had been disinvested in order to meet the (original) income payments remained. Mr H's IM said it would have invested those surplus funds in line with an investment strategy while Curtis Banks said Mr H had maintained a relatively high cash surplus in the account during this time anyway – so hadn't suffered an investment loss.
- It was difficult to conclude that the IM had disinvested the exact amount of assets each month to cover the required income – but there had often been other transactions during the month which might have been for other purposes.
- I thought the IM's role was to buy and sell assets across Mr H's investment portfolio in order to maximise returns for him – not simply to provide the cash so that Curtis Banks could pay his monthly income. So I asked about visibility of the SIPP and discovered that the IM didn't have visibility of the SIPP outside of its own investment portfolio.
- So I thought the IM would, alongside managing the portfolio appropriately, have ensured at least £6,500 was made available in cash each month to meet Mr H's income requirements. Therefore I concluded that if the IM had been aware that Mr H's income needs had been reduced it would have encashed a proportionately lower amount of assets each month.
- So I said Curtis Banks should reconstruct the value of Mr H's SIPP on the basis that the IM reduced its disinvestments over the respective months by the percentage of the income reduction.

### *Responses to my provisional decision*

Curtis Banks said it accepted the provisional decision and would start the process of carrying out the redress calculation.

But Mr H made several initial points in response to my provisional decision:

- His claim for compensation related to the period that the overpayments of income were uninvested. So he didn't require compensation for any period beyond the date of 23 December 2020 – which was when the funds were returned to the IM's account. He thought that where I'd asked Curtis Banks to reconstruct the portfolio "*as at the date of any final decision*" it should have read "*reconstruct as of 23 December 2020*".
- His investments were providing an income of around £28,000 each year, meaning that no sales would have been required to meet the income from October 2020 onwards.
- His portfolio maintained a variable cash balance and sales of investments didn't always match with simultaneous purchases. He thought it was clear that the IM simply couldn't invest what wasn't available for investment. He also noted that the stock market "*staged a huge recovery*" while his surplus funds remained in cash.

Mr H was subsequently provided with the details of the calculation Curtis Banks had carried out to comply with my recommended redress. But he didn't accept it and said he wanted a final decision to take into account that Curtis Banks had worked out that the total redress was based on an overall investment growth rate of 22%, whereas an independent IM report he had requested showed that his portfolio had grown by just under 40% during that time – which was nearly double the figure Curtis Banks had used.

## **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.

And having carefully considered the further information Mr H has provided – and the points he has raised - I see no reason to depart from my provisional findings. So I'll confirm the reasons for reaching my decision as well as responding to Mr H's subsequent submissions.

### *Curtis Banks' error and Mr H's complaint*

In April and October 2020 Mr H requested that his monthly income from his SIPP was reduced accordingly. This was carried out, but his IM wasn't informed and as a result it continued to disinvest assets from his portfolio to cover the original income he'd been receiving. Curtis Banks accepts that it made an error in not informing the IM. It subsequently transferred all of the cash surplus back to the investment portfolio and refunded its drawdown fee for the year as an apology.

But Mr H's IM said that it wouldn't have disinvested the additional assets required to fund the higher income if it had been aware of the income reductions. It thought that Curtis Banks should compensate Mr H for the loss of investment growth suffered from disinvesting those additional assets and remaining in cash until at least 23 December 2020. So I've looked at whether Mr H had, in my view, incurred such an investment loss.

It's difficult to conclude that the evidence I'd been presented with showed the purpose of the various disinvestments that were made each month during this period. The IM didn't necessarily disinvest the exact number of shares or assets to cover the £6,500 of monthly income, but I'm not persuaded that it would have done that in any case. The IM's role was to implement and monitor an investment strategy which gave Mr H the potential to maximise the value of his portfolio. This meant it would have had to buy and sell assets depending on the opportunities that arose each month as well as other market and external factors. Of course, within this strategy the IM needed to ensure that the £6,500 income was available to be paid from Mr H's SIPP, but that wasn't its only role.

So I don't think the IM traded simply to meet the monthly income requirement and therefore it's difficult to decide exactly what it would have done each month to satisfy both of these different requirements – the income and the growth of the portfolio, if it had known that the income requirement was lower. Curtis Bank has provided examples of months when the IM sold far more units of an asset than was required to cover the income, and our investigator concluded that there were only three months when the funds could have remained invested.

### *What should have happened?*

I asked the SIPP provider to confirm which parties had visibility of Mr H's SIPP. It confirmed that, although Mr H and his financial adviser did have visibility, the IM didn't. So I considered whether Mr H ought to have discussed the situation of his overall SIPP with the IM, but I'm not persuaded that would have been necessary.

The IM would have been focused on the investment portfolio strategy and disinvesting assets to provide the necessary income – so I don't think it needed to know the situation with the overall SIPP.

That meant that the IM wasn't aware of the financial position of the overall SIPP and therefore, as the one party involved that hadn't been made aware of Mr H's reduced income

requests, it wasn't aware of the build up of the cash reserve. So I think it's reasonable to assume that the IM would simply have continued to provide at least £6,500 of income for Mr H unless it was told otherwise. But I think that if it had been aware of the reduction in income, it's reasonable to conclude that the IM would have reduced its overall disinvestments proportionately. I think it would have disinvested fewer assets in line with the percentage reduction in Mr H's required income.

In my provisional decision I said that it wasn't possible to know exactly what would have been disinvested each month, and that I hadn't been provided with an agreed strategy whereby the IM disinvested certain assets in order to provide a specific level of funds for the income. So I proposed a redress solution which simply looked at the actual percentage reduction in income and compared this with a similar reduction in disinvestments.

But Mr H wasn't happy with the figure Curtis Banks arrived at following its calculation, as he said it represented a 22% change in investment performance whereas the IM provided evidence to show the portfolio increased by around double that during the period in question. But the investment report represents a picture of the actual performance of Mr H's portfolio from 1 April to 23 December 2020, whereas I have to consider the position he would have been had Curtis Banks' error not occurred.

As I said in previously this wasn't an exact science, and it is impossible to know what would have been disinvested had the IM been made aware of the reduced income requirements at the various times. So I think the fairest resolution is simply to reconstruct the portfolio had the disinvestment been reduced on the same percentage basis as the income was reduced – but taken across all the disinvested assets in the same proportions.

Mr H also questioned my use of the date of any final decision for the calculation date as he said the funds were paid back into the investment portfolio on 23 December 2020 – which was therefore the extent of his loss. I'm pleased to say that I agree with Mr H about the date to which the extent of his loss extends. But my aim is to put Mr H as close to the position he would be in *now* but for the error that Curtis Banks made, so I've simply ensured any loss as of 23 December 2020 is brought up to date.

### **Putting things right**

My aim is that Mr H should be put as closely as possible into the position he would probably now be in had his IM been advised of the reduction in his required income and the disinvested funds that weren't required had remained invested.

### **What must Curtis Banks do?**

To compensate Mr H fairly, Curtis Banks must:

Reconstruct the value of Mr H's SIPP, as at the date of any final decision, on the basis that the IM reduced its disinvestments over the respective months by the percentage of the income reduction. The excess income was £2,500 for April to September and £5,500 from October to December 2020.

So as an example, if the total disinvestment was say £25,000 in April 2020, that disinvestment should be notionally reduced by 38% (the percentage reduction from £6,500 to £4,000). The SIPP value should be reconstructed on the basis that the notional reduction in the disinvestments occurred in the same proportion across the same disinvested assets.

If there is a loss demonstrated by the notional reconstruction:

- Curtis Banks should pay into Mr H's pension plan to increase its value by the total amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.
- If Curtis Banks is unable to pay the total amount into Mr H's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the total amount should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr H won't be able to reclaim any of the reduction after compensation is paid.
- The *notional* allowance should be calculated using Mr H's actual or expected marginal rate of tax at his selected retirement age.
- For example, if Mr H is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. However, if Mr H would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation.

### **My final decision**

For the reasons that I've given I uphold Mr H's complaint against Suffolk Life Pensions Limited trading as Curtis Banks Pensions.

My decision is that Suffolk Life Pensions Limited trading as Curtis Banks Pensions should pay the amount calculated as set out above and should provide details of its calculation to Mr H in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 23 March 2023.

Keith Lawrence  
**Ombudsman**